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Illinois Issues Annual 1977-78

Edited by
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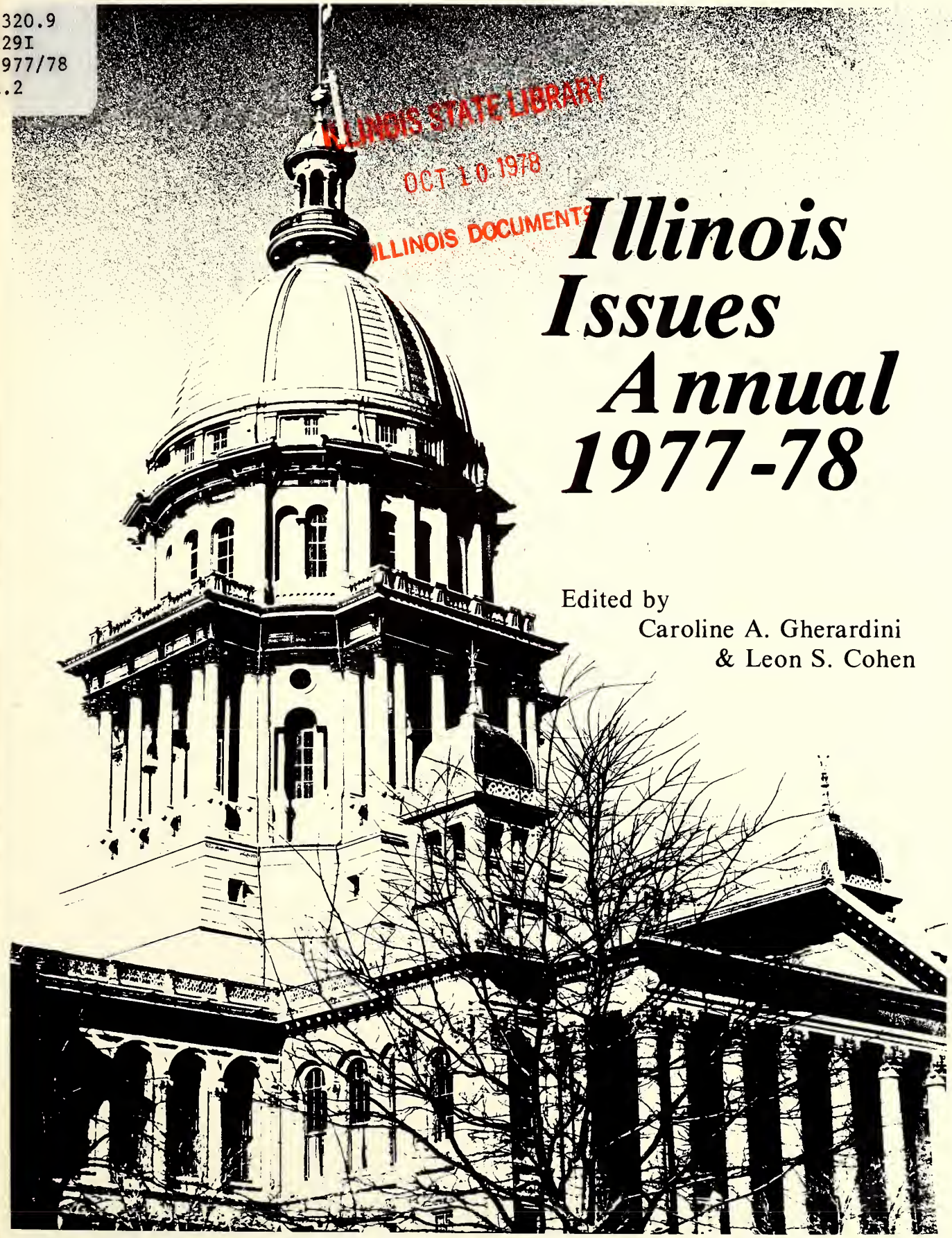

Illinois Capitol

Sangamon State University, Springfield, Illinois

Preface

The third edition of the *Illinois Issues Annual* contains articles drawn from the 1977 and early 1978 *Illinois Issues* magazines. This year's *Annual* has an expanded and revised version of "The ABC's of Illinois government" which provides a background for the articles included. Designed for classroom use, the new *1977-78 Annual* provides the most current information on the issues, people and processes of Illinois government and politics from the perspective of experts and active participants in government.

The *Annual* and *Illinois Issues* magazine are published by Sangamon State University in Springfield, a public senior university designated as the state's public affairs university. The University of Illinois co-sponsors the magazine. The magazine is published monthly and covers issues of state and local government and politics in Illinois. The *Annual* is published each year in time for fall semester classes.

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The ABC's of Illinois government

GOVERNMENT in Illinois, like that in the other 49 states, is characterized by the sharing of political power and authority among different levels and agencies of government. At the state level there is a division or separation of powers among the legislative, executive and judicial branches. On the local level there are more than 6,000 units of government — municipalities, counties, townships, school districts and a variety of special districts which provide specialized services, such as parks, sanitation, transportation and fire protection (see "Special Districts," page 64). Illinois has more units of government than any other state. Generally, the powers of all the local governments have come from the state government. But the 1970 state Constitution grants home rule powers to any municipality which wants them and to county governments which qualify.

Many of the officials of these various Illinois governments are elected by the people. The top state executive officers are elected statewide. All members of the legislature are elected by district throughout the state, as are the judges of the Supreme Court, the Appellate Court and circuit court. Locally, we elect mayors and city council members; village presidents and trustees; county sheriffs, clerks, state's attorneys, tax assessors and county board members; township supervisors, auditors and tax assessors; school board members and regional superintendents of education plus trustees for community college districts; and many of the officers of the special districts.

The sharing of power also is reflected by the system of "checks and balances" which has been part of American government since the Revolutionary War. This system incorporates safeguards which divide power so that no one branch of government can make decisions without being checked in some way by one or both of the other branches. For example, a bill passed by the legislature must be approved by the governor before the bill becomes law; but if the governor vetoes the bill, the legislature can override his veto with a sufficient majority. The courts, exercising their power of judicial review, can decide if actions taken by the governor and the legislature are constitutional. Of course, the basic safeguard of our system of checks and balances is the fact that citizens elect their representatives.

Federal-state relations

It is generally believed that the powers of the federal government have expanded enormously in recent years at the expense of the states. However, in the past 30 years the increase of governmental activity at the state and local levels — measured by the amount of money spent — has increased more rapidly than non-defense spending by the federal government. The states and local governments exercise many powers of vital importance to the average citizen. With a budget of about $10 billion, the state of Illinois runs its many departments and programs and pays for construction of roads, buildings and other projects. The revenues to do all this come from the federal gvoernment, state bonds and state taxes. In Illinois, the greatest source of tax revenue comes from income taxes and sales taxes. Local governments also need revenue to provide services; their revenue comes from federal and state funds, local bonds and local taxes — most notably the property tax.

Local governments have the basic responsibility for education, police and fire protection, sanitation, highways, mass transportation and other needed public services. The state manages welfare aid, public higher education, prisons, highways and mental health services plus a host of other programs. The state also helps fund local school districts. Both state and local governments, however, would have difficulty meeting their responsibilities without large amounts of federal aid. Distribution of money tends to be fought over. Some feel that Illinois does not receive its fair share of federal dollars; others say the conditions that accompany grants from the federal government stifle state and local initiative. Local governments are often critical of the way state money is distributed to them. Right now, the local property tax is under severe criticism. This tax is collected by and used only by local governments but has certain standards and limits set by the state government. Because the property tax is based on the value of real estate, there have always been problems with inequity. And, recently, inflation has sent property taxes skyrocketing (see "Property tax system warrants reform," page 60 and "Property tax for public schools," page 109). Voters in California were so dissatisfied with the property tax that they voted June 6, 1978, to cut it back drastically. Illinois voters do not have the "open initiative" like California which allows citizens, by petition, to place proposed state laws to a vote statewide (see "Should Illinois adopt the open initiative," page 132).

Three branches of government

Under the Illinois Constitution, the governor serves as the chief executive officer of the state. In state government, he holds more power than any other individual. The legislature, officially named the General Assembly, holds the lawmaking authority in the state, subject only to the limitations of the

The cycle of government

January
- 2nd Monday ..... New state officers take office following a general election.
- 2nd Wednesday ..... Annual legislative session begins.

March
- 1st Wednesday ..... Governor submits budget to legislature.
- 3rd Wednesday ..... Primary election in even-numbered years.

July 30th ..... Target date for end of spring legislative session.
July 1st ..... New fiscal year begins for state.
October (variable) ..... Usual month for beginning of fall session to act on vetoes.
November
- 1st Tuesday after 1st Monday ..... General election in even-numbered years.

Illinois and U.S. Constitutions. The judiciary settles disputes over civil, criminal and constitutional questions.

Redistricting and elections

The General Assembly consists of two chambers — the Senate with 59 members and the House of Representatives with 177 members. The state is divided into 59 legislative districts, and voters in each elect one senator and three representatives. In order to assure equal representation of citizens in the General Assembly — in accordance with the one-man, one-vote principle set by the U.S. Supreme Court — the boundaries of these districts change every ten years (following the federal census) to reflect population shifts. Redistricting is the duty of the legislature. Democrats and Republicans often clash when a proposed change in district boundaries shifts the majority in a district from one party to the other.

The state holds a general election in November of every even-numbered year with party primaries held the preceding March. All state representative seats are up for election in each general election, since representatives serve two-year terms. Every ten years, at the general election following statewide redistricting, senators are elected in all 59 districts. But their terms vary so that not all senators will be up for reelection at the same time. During the ten-year period between redistricting, there are two four-year terms and one two-year term for senator in each district.

Members of the Illinois House of Representatives are elected under a unique system of proportional representation called "cumulative voting." Three members are elected from each district, but the voter may cast all of his/her votes for one candidate (a "bullet" vote) or divide them equally among two or three candidates. Since each major party usually nominates only two candidates for the three available seats, cumulative voting usually guarantees that the minority party will get one House seat in every district.

The Legislature

A "new" General Assembly is established every two years, opening its annual sessions on the second Wednesday in January. Each new General Assembly begins in the odd-numbered year following a November general election; thus the 80th General Assembly was seated on January 12, 1977, and the 81st will convene on January 10, 1979. The first order of business for a new General Assembly is to elect its leadership and organize its committees and rules under that leadership. The Constitution requires the governor to preside over the Senate until it elects its president from among the membership. Similarly, the secretary of state presides over the House until a speaker has been elected from among the representatives. Generally, the party holding a majority of seats in a chamber elects one of its own members to be presiding officer, and the leading candidate from the opposition party becomes the minority leader.

Once the contests for the top leadership posts are over, the Senate president and House speaker appoint their party's majority leaders, assistant majority leaders and party whips. The minority party leaders also appoint assistants and party whips. The floor leaders, their assistants and whips are responsible for the flow of legislation and the organization of debate leading up to the final vote on bills.

The other key posts in control of the majority party are the chairmanships of the committees. Both the Senate and the House have their own standing committees, and every senator and representative will be assigned to at least one committee. The majority party usually has the chairmanship and a majority of members of each committee. Committees decide which bills will reach the floor for a vote.

Besides the lawmaking power — including passage of appropriation or money bills — the General Assembly also has the power to investigate and oversee the operations of state government and to remove executive and judicial officers (through impeachment by the House and trial by the Senate). In addition, many of the governor's appointees to top agency positions and various state boards and commissions can officially assume office only after receiving the consent of the Senate.

Compared to other states, the legislative process in Illinois is open. The public may attend all sessions and committee meetings of the House and Senate, although committee meetings can be closed by a two-thirds vote of the members (see "Open meetings act," page 129). There are requirements for notice of hearings, and the actions of the General Assembly and its committees are widely reported in the media and in public documents. But since the number of bills introduced in the two annual sessions of a General Assembly exceeds 5,000, it is often difficult to follow all legislation carefully.

Any citizen can develop an idea for a new law. To actually become a law, however, such an idea must first be introduced

as a bill in the General Assembly by a member of either house or by one of the standing committees. The bill must be written in proper legal form as certified by the legislature's bill-drafting agency, and once introduced, does not become law until passed in the same form by both chambers of the General Assembly, and signed by the governor. A "simple majority" (a majority of the members present and voting) is sufficient to pass resolutions or to amend bills before their final passage. But when a bill reaches its final vote in the House and in the Senate, a "constitutional majority" is usually required. This means a majority of the members elected to each house: 30 of the 59 senators and 89 of the 177 representatives. The final vote must be on a recorded roll call vote. The record roll call on bills which pass is printed in the legislative journals.

Final passage of legislation is the last of many steps required in the legislative process. The following is a detailed explanation of the legislative procedures as outlined by the Illinois Constitution.

Legislative process in detail

First, a bill must go through "three readings" in each house. "First reading" is the point of introduction and assignment of a bill number. For example, a bill is introduced by Representative John Doe and receives number 262. It is now officially House Bill 262 and is then assigned to one of the standing committees. Let us say that Rep. Doe's bill deals with competency testing of school children. It is therefore assigned to the Elementary and Secondary Education Committee of the House. After proper notice, the committee holds a hearing on the bill, listening to the arguments by the sponsor and any proponents or opponents who wish to testify. The committee can recommend H.B. 262 for passage, with or without amending it, or the committee can take action that will, in effect, defeat it.

If the committee acts favorably on H.B. 262 by a majority vote of its total membership, the bill moves out of committee to the House floor for "second reading." This reading notifies all House members of the action taken by the Education Committee on Rep. Doe's H.B. 262 and provides for the introduction of amendments to the bill which can be passed by a majority of the members present and voting in the chamber. Then the bill moves to "third reading." Approval on third reading, means H.B. 262 has passed the House and goes to the Senate. If H.B. 262 fails to receive a constitutional majority when Rep. Doe calls for the vote on third reading, he is allowed to postpone consideration until a later date. Or, he can allow the bill to die. But if H.B. 262 received the required majority in the House, its house of origin, it goes to the Senate where it moves through a similar procedure of committee and floor action.

The individual who exercises the most control over what happens to a bill is its chief sponsor. Rep. Doe may have many cosponsors for his bill, but H.B. 262 does not "move" except at the request of the chief sponsor, who is responsible for requesting a committee hearing and asking that the bill be called at the second and third reading stages. When H.B. 262 moves to the Senate, Rep. Doe must find a senator to sponsor his bill there. Since a member from the same legislative district is usually chosen, Rep. Doe asks Sen. Jane Smith from his district — and his party — to handle H.B. 262 during the Senate procedures. The control of the chief sponsor extends even to the ability to have a bill tabled if the sponsor is displeased with amendments that have been added.

If H.B. 262 passes the Senate without any additional amendments, it is sent to the governor for his signature. But if the Senate has amended H.B. 262, further action is necessary since a bill must pass both houses in identical form. There are various ways to iron out the differences: (1) The first house may accept the amendments added by the second house; (2) The second house may agree to back down or "recede" from its amendments and accept the original action of the first house, or (3) The membership of both houses may agree to a report of a "conference committee" made up of an equal number of senators and representatives, who usually come up with a compromise. The conference committee report must be passed by both houses. Occasionally, more than one conference committee is necessary before the two houses agree on the final content of a bill. If the two houses cannot find a solution to their differences, the bill dies. But if agreement is reached, the bill is forwarded to the governor. If the governor signs the bill, it becomes law and receives a public act number. But, if the governor is dissatisfied with the bill, he has the power to veto it.

Veto powers

Besides directly using the veto power, the governor can influence the legislative process by his criticism or support of a bill. When the governor presents his budget to the General Assembly each March, he makes his views known by the level of expenditures he recommends for programs, agencies, construction and so on. At times, just the governor's threat that he will use his veto power influences the legislature to change a bill to the form he prefers. But, if bills are passed which the governor does not want to become law, he can exercise his veto power. The legislature can override the governor's veto action only if there is a sufficient majority.

The various types of vetoes and possible legislative responses are as follows:

1. "Total veto" of an entire bill by the governor. The legislature can override with a recorded vote of three-fifths (60 per cent) of the members in each chamber (107 in the House and 36 in the Senate).

2. "Item veto" in an appropriation bill which effectively wipes out money for a specific item in a particular program. The legislature can override with the same vote as the total veto.

3. "Reduction veto" of an amount in an appropriation bill, which reduces the level of state spending for a specific item in a program. The legislature can restore the full amount by a recorded vote of a majority of the members elected to each chamber (constitutional majority).

4. "Amendatory veto" by which the governor recommends revisions to a bill. The General Assembly can accept the governor's recommended changes with a recorded vote of a constitutional majority in each chamber. The governor then certifies the vote, and the bill becomes law in the form he recommended. However, if three-fifths (60 per cent) of the members vote to override the governor's proposed changes on a recorded vote, the bill becomes law in the form originally passed. If neither a constitutional majority accepts the governor's changes nor a three-fifths majority rejects them, the bill dies as if it had been totally vetoed (see "Should

amendatory veto power be curbed?" page 24).

Lobbyists

Legislators are not the only participants in the legislative process. Citizens often write to their legislators to recommend new legislation. But since state law affects virtually every business and interest group, the largest of the public and private interest groups employ lobbyists to represent them in Springfield. Lobbyists watch for the introduction of bills that affect their interest groups. If an interest group wants a law changed, it will also lobby to have a legislator introduce a bill. Lobbyists arrange to testify before committees, suggest amendments and, in general, work to promote or oppose bills depending on the interests of their employers. More than 300 lobbyists are registered with the secretary of state, and most are ethical professionals who take pride in their reputations for integrity. They are exercising, for organized interests, the First Amendment right of petition to government. But bribery to influence legislation has occurred and has led to criminal action against lobbyists and a handful of members of the General Assembly. There have also been legislative attempts to develop more stringent lobbying regulations.

General Assembly agenda

The General Assembly tries to wind up its business each year by June 30. At that time it recesses until the fall when it returns to act on the governor's vetoes. The June 30 deadline is important because it is the final day of the fiscal year, and appropriations bills should be passed and signed into law by July 1, the beginning of the new fiscal year. Also, the state Constitution provides that any bill not passed by June 30 does not become effective as a law until July 1 of the following year unless it receives approval by an extraordinary majority of three-fifths (60 per cent) of the members elected to each house. In recent years, the legislature has run past the June 30 deadline, and 60 per cent majorities have been required to approve a number of major appropriations bills.

In the second year of each General Assembly, legislative activity is generally reduced. With primary elections coming up on the third Tuesday in March, the major business of the legislature begins in late March or early April (instead of January in the odd-numbered first years), and the leadership tries to restrict legislative action to budget and emergency legislation. This attempt is only partially successful since the House and Senate rules committees generally declare several hundred bills to be "emergencies."

The executive

Once laws have been enacted, it is the duty of the executive branch to administer them. It is usually necessary for executive agencies, boards and commissions to pass rules to implement legislation. These rules are published in the *Illinois Register,* and processes are established for public notice and hearings before new rules may become effective (see "Regulating state regulations," page 27).

Unlike the national government with the president as the single "chief executive," Illinois has six elected executive officers and two executive boards mandated by the state Constitution. The six officers are elected statewide and serve four-year terms. Starting in 1978, the election of all six statewide executive officers will be held in even-numbered years midway between presidential elections. It is hoped that electing the governor and other executive officers two years before and after presidential elections will eliminate the possibility of candidates being carried into state offices on "the coattails" of presidential candidates.

The 21 "Code" departments

Administrative Services
Aging
Agriculture
Business and Economic Development
Children and Family Services
Conservation
Corrections
Financial Institutions
Insurance
Labor
Law Enforcement
Local Government Affairs
Mental Health and Developmental Disabilities
Mines and Minerals
Personnel
Public Aid
Public Health
Registration and Education
Revenue
Transportation
Veterans Affairs

The governor exercises "the supreme executive power." He appoints directors of the state "code" departments, members of state boards and other state officials, subject to the consent of the Senate. He can also remove his appointees. While he does not have the power to remove other elected officials, he can require them to supply information on the operation of their offices. The governor may also grant pardons and shorten sentences for offenders.

The lieutenant governor is elected jointly with the governor to assure they are of the same political party. He has no constitutional responsibilities other than to exercise powers delegated by the governor or prescribed by law. In case of the death or disability of the governor, the lieutenant governor assumes the higher office.

The other four elected officers are the attorney general, comptroller, treasurer and secretary of state. They exercise responsibilities of major importance in limited areas. When members of the political party opposite the governor occupy any of these offices, they usually lead the opposition to the administration. For example, Gov. James R. Thompson, a Republican, has been challenged throughout his administration by Comptroller Michael J. Bakalis, a Democrat. Bakalis is now the Democratic candidate running against Thompson in the 1978 November general election.

Under the Illinois Constitution, the attorney general is the chief legal officer of the state. He issues legal opinions on questions submitted to him by government officials in the state. When a state agency goes into court or appears before a quasi-judicial board, it is represented by the attorney general.

The comptroller maintains the central fiscal records and holds sole authority to order money into and out of the state treasury. The office was created by the 1970 Constitution. An additional check on state finances is provided through the treasurer who is the custodian of state funds. One of his responsibilities is to keep funds invested at all times to gain maximum interest.

The secretary of state is the official "recordkeeper" of the state. Acts of the legislature are filed with his office, and after each session he publishes the laws enacted. The secretary of state also administers motor vehicle registration and driver licensing laws, charters corporations and regulates the issue of securities. He publishes the *Illinois Register* which lists the administrative rules set down by state agencies, and he directs the operation of the state library.

The two executive boards are relatively new. Mandated by the 1970 Illinois Constitution, they are the State Board of Education and the State Board of Elections. The General Assembly has the power to determine the number of members and selection method of these boards. The General Assembly decided that both boards would be appointed by the governor. But the initial legislation for appointing the members of the Board of Elections was declared unconstitutional by the state Supreme Court. New legislation was passed early in 1978 (see "State Board of Elections," a three-part series, pages 86-91). The State Board of Elections administers voter registration and election laws. The State Board of Education appoints the state superintendent of education, a position which had been an elected office prior to the new Constitution. The superintendent administers the Illinois Office of Education.

Executive reorganization

A governor's ability to function effectively depends partly on the structure of the executive agencies and partly on his own leadership and administrative skills. The fact that he can remove any official whom he appoints gives him a great deal of control. He also derives power from his constitutional authority to reorganize agencies and to initiate the budgeting process.

The 21 departments created by the Civil Administrative Code are directly responsible to the governor (see box, "The 21 code departments"). The governor appoints the directors of these departments, and they usually serve only during that governor's administration, similar to the cabinet officers of the U.S. president. The governor also appoints the principal officers or board members in many other agencies (see box, "Major nondepartmental agencies"). But, in nondepartmental agencies the governor's control varies because members of multi-member boards and commissions serve terms overlapping that of the governor. Some of these boards and commissions are very powerful in their specific areas. An example is the Illinois Commerce Commission which regulates public utilities, trucking and railroads.

The Illinois Board of Higher Education (IBHE) is considered the chief administrative agency for higher education and is appointed by the governor with the consent of the Senate. The University of Illinois Board of Trustees, which is elected statewide, reports to the IBHE. All other public colleges and universities are governed by four other boards, which also report to the IBHE and are appointed by the governor with the consent of the Senate.

The governor's power to reorganize executive agencies is limited to the agencies "directly responsible" to him. Such reorganizations are subject to veto by either house of the General Assembly within 60 days after the governor files a reorganization plan. This power was granted in the 1970 Constitution and was exercised for the first time in the spring of 1977 when Gov. Thompson used executive orders to reorganize the Department of Law Enforcement and to merge the Departments of Finance and General Services into a Department of Administrative Services. Although there was some legislative opposition to the second order, neither order was vetoed, and the reorganization was accomplished. In the spring of 1978, Gov. Thompson issued an executive order to merge the Institute of Environmental Quality and the Division of Energy in the Department of Business and Economic Development. The resulting Institute of Energy and Environmental Resources would incorporate a more unified approach to state policies affecting energy and the environment.

Governor's budget

The governor's most effective management tool is the state budget, which is shaped for him by the Bureau of the Budget. The Constitution directs the governor to prepare an annual budget and submit it to the General Assembly. Proposed expenditures, the Constitution says, are not to exceed funds estimated to be available during the year. The deadline for budget submission is the first Wednesday in March for the fiscal year which begins four months later on July 1.

The budget is the governor's plan for managing the state for the coming fiscal year. But it is the legislature which must pass the bills authorizing the money for each and every item of state spending. Bills to appropriate money are introduced by members of the legislature just like any other bill. There are usually appropriations bills identical in amount to the governor's recommendations on each item in his budget. But not every appropriations bill will agree with the governor's budget. Some would give lower amounts than his recommendations and others would fund new programs not

Major non-departmental agencies

Banks and Trust Companies Commissioner
Commerce Commission
Capital Development Board
Court of Claims
Environmental Protection Agency
Fair Employment Practices Commission
Historical Library
Industrial Commission
Institute for Environmental Quality
Liquor Control Commission
Military and Naval Department (Adjutant General)
Pollution Control Board
Racing Board
Savings and Loan Commissioner
State Fair Agency
State Tollway Authority
Vocational Rehabilitation Division

included in the budget. Appropriations bills are usually introduced at the end of March or in early April and are assigned to the House or Senate appropriations committee, where the conflicts begin along sectional and party lines. Once appropriations bills are passed, they go to the governor who can use his veto power to reduce or strike out items, but he cannot increase an appropriation (for examples of appropriations fights and compromises, see "State aid to schools," page 104 and "Public Aid," page 113).

The courts

Illinois' judicial system includes the Supreme Court, the Appellate Court and the circuit courts. The state has a "unified" court system which means that there are no special courts with local jurisdiction. The circuit courts have general original jurisdiction over all judicial matters. The Appellate Court hears appeals from the circuit courts. It also hears appeals from certain administrative agencies, such as the Pollution Control Board, as determined by the General Assembly. The Supreme Court hears appeals from the circuit courts or the Appellate Court as determined by Supreme Court rules. It also administers the entire court system through the Administrative Office of the Illinois Courts.

All judges in Illinois are elected (see "Should judges be elected or appointed?" page 45). The state is divided into five judicial districts for the election of Supreme and Appellate Court judges. Cook County is one district, and the rest of the state is divided into four districts of approximately the same population. Three Supreme Court judges are elected from Cook County and one from each of the other districts. The state is also divided into 21 judicial circuits for the election of circuit court judges. Supreme and Appellate Court judges serve terms of ten years, and circuit judges have six-year terms. Election is initially by partisan ballot, but at the end of a judge's first term he may file for "retention" and be retained for another term, without running against another candidate and without party designation. All that is required is a favorable vote of three-fifths of those voting on his retention. Vacancies are filled by the Supreme Court until an election can be held.

The circuit court judges in each circuit elect one of their number as the chief judge for administrative purposes, and they appoint associate judges for terms of four years to hear small claims, traffic offenses and other matters. A circuit court clerk is elected in each county, appellate court clerks are appointed by the Appellate Court judges in each district, and a Supreme Court clerk is appointed by that court.

Judicial misconduct

As a means of checking on possible misconduct of judges, the 1970 Constitution established a Judicial Inquiry Board. The board consists of two circuit court judges appointed by the Supreme Court, and seven persons — three of whom are lawyers — appointed by the governor with the consent of the Senate. The Judicial Inquiry Board receives complaints and makes investigations with respect to the conduct of judges. The board can then file a complaint with the Courts Commission (also established by the Constitution). The commission consists of a Supreme Court judge, a chairman appointed by the Supreme Court, two Appellate Court judges appointed by that court, and two circuit court judges appointed by the Supreme Court. The commission can discipline a judge for misconduct to the extent of removing him from office.

Politics and government

The structure and processes outlined above provide a broad formal framework in which to examine the way Illinois is governed. But decisions in government are part of the political process, and politics involves a number of nongovernmental organizations including political parties and interest groups. The actual enactment and implementation of public policy is a fascinating process that mixes the formal and informal aspects of government. Sometimes the process is dynamic; sometimes it is very slow. Always, there is an element of unpredictability.

Illinois politics cannot be understood solely in terms of party politics. New coalitions spring up around issues and candidates like prairie grass around farm ponds. But for the larger divisions, the state has historically been split along geographic lines. Today the sectional divisions are basically these: Chicago is Democratic; the suburban "collar counties" around Chicago are Republican; Downstate is split between the two parties. "Downstate" for both major parties means any county outside Chicago and Cook County. Thus Rockford, north of Chicago near the Wisconsin border, is "downstate" to Illinois politicians. Election analysis now shows that Democratic voters in Chicago are almost evenly balanced against the Republican voters in the six collar counties around the city. It is becoming more important for the political parties to campaign in the Downstate areas in order to carry a statewide election for a candidate (see "Downstate holds the key to victory," page 81).

The strongest voting bloc in the General Assembly is the Chicago Democrats, who often compete with suburban Republicans. A good example is state spending for the Regional Transportation Authority (RTA), which was created to serve a six-county area including Chicago. The suburbs feel they do not get their fair share of local, state and federal RTA funds to develop public transportation services in their areas (see "The RTA chugs on," page 59 and "Daley and the suburbs" Part I, page 72 and Part II, page 76).

Downstate is not one unit politically, but a patchwork of Republican and Democratic areas. In the General Assembly, representatives from Downstate may vote along party lines or join on issues. They may conflict with each other over state funds for roads. On the other hand, state aid to schools is an issue which may unite Downstaters against the Chicago representatives.

At times normal party and sectional feuding goes awry and coalitions spring up. A powerful combination during the 1977 session has been the alliance of Chicago Democrats and most Republicans. Both groups wanted different things, but both were willing to bargain. For example, Republicans were amenable to helping Democrats get federal aid for Chicago roads, and the Democrats promised, in return, to keep the lid on spending to conform to the governor's recommended budget.

Sometimes smaller factions enter into the picture. One of these is a group of independent Senate Democrats which at times votes with Downstate Republicans against Chicago

Democrats. These Democrats are called the "Crazy Eight," although their numbers — and independence — varies from vote to vote and issue to issue. A black caucus has also been organized in both houses to protect the interests of that minority.

The present governor, "Big Jim" Thompson, and the previous governor, Dan Walker, had little past involvement in regular party structures before running for governor. In fact, Walker, a Democrat, ran against the regular Democratic organization. He won in 1972, but lost the party renomination in the 1976 primary. Nonetheless, during their administrations, both Walker and Thompson built their own legislative coalitions. Republican Thompson has had to work with a legislature controlled by the Democrats. But Thompson has been able to work out compromises with the Democrats, most notably, the arrangement he made with Chicago's new mayor, Michael A. Bilandic, to have Chicago Democrats vote with Republicans on Thompson's budget while Thompson and the Republicans approved a Chicago Crosstown highway plan.

Another compromise reached in 1977 was over a criminal sentencing revision bill. A new "Class X" plan proposed by Gov. Thompson to deal harshly with persons who commit "heinous crimes" was combined with a House plan backed by the Democrats to provide a new system of determinant sentencing. The differing bills were combined into a single one with features of both, taking Thompson's "Class X" label and the House bill number. In 1978 another political compromise was reached. This time the issue was over the new State Board of Elections. The central issue for Democrats and Republicans was how to balance the state board politically, so that neither party was favored (see "State Board of Elections," a series of three articles, pages 86-91).

The compromises reached across party lines in 1977 and early 1978 were not without precedent. They reminded some observers of a similar working relationship between the legislative forces of the late Chicago Mayor Richard J. Daley and former Republican Gov. Richard B. Ogilvie in the 1960's. There are, of course, some issues on which individuals — governors, mayors, and legislators — refuse to compromise, especially matters of conscience like abortion, laetrile and the proposed Equal Rights Amendment to the U.S. Constitution.

Though new to party politics, Gov. Thompson appears to be climbing to the top of the state Republican leadership, joining campaign efforts with Republican U.S. Sen. Charles H. Percy who is also up for reelection in November 1978. Much will depend on Thompson's reelection bid.

In December 1976, the strongest leader the state Democrats have ever had died. Chicago Mayor Richard J. Daley had more legislative influence or "clout" as mayor and Cook County Democratic chairman than any governor of his time. His death caused a loss of political cohesiveness among Democrats throughout the state. Nowhere was this vacuum more apparent than in the statewide Democratic slatemaking session held in November 1977 for the March 1978 primary election. In the past, the endorsement of the state central committee slatemakers guaranteed victory in the primary, and party faithful never challenged the slate in the primary.

But in 1977 it was different. With a ticket made up of two members of the Chicago Metropolitan Sanitary District, a handful of unknown Chicagoans, no women, and only two downstaters, the slate was widely criticized by Democrats, including Secretary of State Alan J. Dixon — who was himself on the slate — and U.S. Sen. Adlai E. Stevenson III. But when those who were rejected by the slatemakers ran in the primary against the slated candidates, they were rejected by the party voters.

In comparison, Republicans displayed a striking unity, allowing — as usual — an open primary to decide their candidates for the general election. Republicans hope to seize control of the legislature from feuding Democrats in the 1978 general election. It seems that they might do it in at least one house. Prior to the Watergate-tainted election of 1974, the Republicans controlled both houses of the Illinois legislature, as they had for nearly a decade.

State government and politics are too often neglected, yet actions in Springfield affect everything from divorces to coal mining, from capital punishment to lottery games, from education to welfare, from collective bargaining to regulation of business, from highways to parks — and much more.

Many of the articles in this *Annual* look at the people in politics and government (see "Big Jim," page 18; "George Ryan," page 10; "Bill Redmond," page 11, and "Walter V. Schaefer," page 38). Other articles explain some of the policy issues debated in Illinois over the past year (see "The right to strike," page 101; "State aid to schools," page 104; "Public Aid," page 113; "Pot: What should the penalties be for marijuana?" page 120, and "Should Illinois adopt the open initiative?" page 132).

Government is faced with making decisions. And everyone wants their way: Republicans, Democrats, upstate, downstate, business, labor, environmentalists, farmers, minorities and many others — including the individual citizen and taxpayer. And in a democracy, they will have their say. But in the end, the decision by government will probably be a compromise arrived at through a process which is complicated, colorful and, at times, maddening.

By MARY C. GALLIGAN Reprinted from *Illinois Issues,* April 1977

Republicans' leader in House

George Ryan

MINORITY Leader George H. Ryan of Kankakee is the official spokesman for the 83 Republican members of the House. With a 46-37 victory over opponent William Walsh of LaGrange Park in party caucus in December, Ryan became one of the four most powerful members of the 80th General Assembly.

The 42-year-old druggist faces the task in his third House term of pulling the GOP together after the bitter campaign for minority leader. Backed by his political "mentors" and past and present running mates from his own 43rd district — outgoing Minority Leader James "Bud" Washburn of Morris and Rep. (former Senator) Edward McBroom of Kankakee — Ryan received most of his support from downstate and the City of Chicago.

In an interview February 3 in his office, Ryan expressed his views on GOP unity, his role as minority leader and issues facing the General Assembly and the state in the next two years.

Q: What is your perception of the leadership position you hold and how do you view your role in that position?

A: Well, I was officially sworn in or elected as minority leader on the 12th of January, and I've found it to be almost overwhelming but very enjoyable — certainly very time consuming. My role at this point is to coordinate the Republican members of the House with Gov. Thompson's programs as much as possible. When you have a governor of your own political faith, it's important that you work together. I think the last four years under the Walker administration were not good. Walker had constant confrontations as much with the Democrats as he did with the Republicans, and certainly we don't want that again. We want to work. The state of Illinois has a lot of problems, and they can't be solved by a lot of political bickering.

Q: Will your party develop a legislative program of its own? Or will you follow Gov. Thompson's program?

A: Certainly we want to maintain our own identity as a branch of government, and we'll do that. We'll have proposals from time to time that I'm sure the governor will not be able to live with, but that's not going to be our intent. We want to work with him; I know he wants to work with us.

Q: How did you influence Gov. Thompson's position on pay raises for legislators?

A: A few days after I was elected, he invited the entire leadership of the 79th General Assembly and the 80th General Assembly's two minority leaders from the House and Senate, Sen. Shapiro and myself, to Chicago and the question came up. It's not that I don't believe in a pay raise for legislators; I do. Most people don't realize the time and the money that's involved in being in office. My objection was the timing of the bill. Illinois has a lot of problems that are a lot more pressing, financially, than a pay raise for legislators. Education's suffering, so is mental health. We've got people programs to take care of before we think about a pay raise.

Q: What degree of unity can we expect from the Republican side of the aisle after the hard-fought battle for the leadership with Rep. William Walsh [R., LaGrange Park]?

A: This is the first leadership fight I've been through. I thought it was a very clean campaign. We gave about one-fourth of the House committees to Walsh supporters when we appointed five spokesmen from the Walsh side of the race. And I understand from some people who have been here a lot longer than I have that this is a first. There were 37 people who thought that Bill Walsh was the best choice. I don't have any grudge against those people for feeling that way. Maybe I didn't sell myself to them enough. If you talk to the Republican members, you'll see that 95 per cent of them are happy — and if I can keep 95 per cent of 83 people happy, I'm going to be happy.

Q: What effect on party unity have geographical differences had, especially downstate v. suburban Chicago?

A: I don't think it's had an effect and I believe we've dispelled that feeling with the suburban members. Certainly Bill Walsh is respected by everyone in the House, and he is a suburban member and consequently they supported him in the minority leader election. I did have three suburban people that stayed with me, and Bill Mahar (R., Homewood) of the suburban group is part of my leadership team. I named him as a conference chairman and he sits in on all our leadership meetings. I've also appointed two suburban people to committee spokesmanships, Rep. Edward Bluthardt (R., Franklin Park) to the Elections Committee and Rep. Donald Totten (R., Schaumburg) to the Motor Vehicles Committee. I also picked three of the downstate people that were with Walsh to be Republican spokesmen on committees.

Q: How do you compare Gov. Thompson's relationship with the legislature to Gov. Walker's?

A: Gov. Walker had no rapport, no relationship with the General Assembly — period. I don't think he had much in

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MARY C. GALLIGAN
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Reprinted from *Illinois Issues,* April 1977 **By GARY DELSOHN**

Speaker of the House

Bill Redmond

ADMITTING that becoming speaker of the House was never one of his burning desires, William A. Redmond was nonetheless first elected to that position as a compromise candidate on the 93rd ballot in 1975. After serving 17 unassuming years in the Illinois House, the 67-year-old Bensenville Democrat was thrust into leadership primarily because he was one of the few experienced Democrats acceptable to Chicago Mayor Richard J. Daley and Gov. Daniel Walker. Never a sponsor of controversial legislation, Redmond was, as even his admirers confess, a dedicated "back bencher," a man content with faithfully representing his DuPage County constituents for the last 19 years.

Actively campaigning for the speakership in 1977, Redmond was elected on the first ballot, surprising many observers who predicted he would have an uphill struggle. His even-tempered manner of running the House had endeared him even to his opponents, and there was virtually no concerted opposition to his candidacy this time around.

Redmond took 90 minutes at the end of a busy day, January 25, for this interview in his House office.

Q: How do you view your role as speaker of the House?

A: Primarily as the presiding officer. The speaker is the speaker for both the Republicans and the Democrats. Of course, when you have a governor of the opposite persuasion it does take on some partisanship, but serving as the presiding officer is the main thing.

Q: How do you respond to criticism that you were not forceful enough as speaker in your first term?

A: In the first place, during my first term we had a badly divided Democratic party. We had a governor, who didn't get along very well with the mayor of Chicago. I've said before and I'll say again, there weren't words persuasive enough to convince either Gov. Walker or Mayor Daley that either one of them should change. The only thing I can point out is that I'm Democratic chairman of the second largest county in Illinois — DuPage — with the second largest Democratic vote in the state. I must have done something right, I must have some political prowess or I wouldn't hold that position.

Q: What can we expect from you as speaker this term? Will you continue to emphasize the themes of "openness and accountability" as you did last time?

A: Government belongs to the people. Everything I can do to make the process more accessible, I'll do. My relations with the press and public have always been open and reasonably good. I don't intend to sponsor any controversial legislation. My predecessor — W. Robert Blair [R., Park Forest, speaker from 1971-1975] — got into trouble when he sponsored legislation on the Regional Transportation Authority. It was the focal point of a lot of quarreling and snarling, and a lot of it had to do with the bill itself, rather than him. But a lot of that animosity was transferred to the speaker.

Q: What type of relationship do you expect House Democrats to have with Gov. Thompson, and how will it differ with the relationship you had under Gov. Walker?

A: Well, Gov. Thompson has indicated that he wants to work with the legislature. Some of Gov. Walker's advisors gave him bad advice. They told him the legislature was his adversary. Gov. Thompson has said some things along the same lines, but he would make a sad mistake if he thought we were his adversary. He's indicated a willingness to go along. He's got his role and we have ours, but that doesn't mean you have to be ugly about it.

Q: Why did you win the speaker's race so easily the second time?

A: I went all over the state. I went to Vandalia, Collinsville, Albion and anyplace else anyone asked me. Speaker doesn't mean much, maybe, in Chicago, but it's considered a big job downstate. I went to places where they had never seen a speaker before. And I tried to do anything I could for the members. I spoke out against the phony Political Honesty Initiative; I defended members' rights for a pay raise; I've tried to be fair and open; and this time I had the independents. I worked hard, and also, there really was no one else to rally around.

Q: How will your job be different during this session?

A: It's a lot easier. My letters advising members of their committee assignments went out January 25 this year. Two years ago they went out February 14. We're way ahead of ourselves compared to two years ago. Last time, it was a bitter pill to know that 17 Democrats didn't vote for me. I had a good legislative record; I paid my dues to the party, I carried my oats to the donkey. But, there's no resentment now. Most of those fellows nominated or seconded me this time. It was very gratifying to get elected on the first ballot this time.

Q: Gov. Walker is accused of fostering a great deal of divisiveness within the Democratic party in Illinois. With him gone, at least for the time being, can we

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GARY DELSOHN
A graduate student in the Public Affairs Reporting Program at Sangamon State University, Delsohn edited a weekly newspaper in Colorado, the *Del Norte Prospector,* after graduating from Southern Illinois University with a bachelor's degree in journalism.

Ryan

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the Senate, and he may have had four or five fellows in the House — which I understand is very unusual for a governor. I don't see Thompson engaging in constant confrontation with the General Assembly. That was the Walker style of politics, but it's certainly not the Thompson style. I think we'll see the Democrat members try to get along. Most of them will probably get along better with Thompson than they did with Walker.

Q: What kind of session do you foresee for the 80th General Assembly?

A: The way the Senate's going, I'd say a tough one right now. We've got money problems. Thompson has vowed not to increase taxes. I agree with him, and I think most of the Republican members do too. We want to maintain the best level of service that we can in state government without an increase in taxes, and I think it can be done. It's going to take a lot of hours, but our members are prepared to be here for long sessions.

Q: What effect has the death of Mayor Daley had on the legislature and how will the scramble to succeed him affect the legislative process?

A: I think it's very evident in the leadership struggle in the Senate, although I'm not sure that the Mayor could have resolved the problem. Daley was alive when we had our deadlock over the House speaker two years ago. The Mayor could always command 40 or 45 House votes with a phone call. Now I think the independents will be a little more independent.

Q: How do you feel about legislative reform? Should legislators be limited in the number of bills they can sponsor?

A: I couldn't support that proposal. I do believe there are entirely too many bills introduced into the General Assembly . . . for political reasons, public relations — whatever reason — but how you can avoid that, I'm not sure. I don't know how you could limit a member in the introduction of his bills and let him do the job for his constituency. It might be better to increase the term of House members. Maybe that sounds self-serving, but you've got to remember we run every other year, and the political

'We've got money problems. Thompson has vowed not to increase taxes. I agree with him, and I think most of the Republican members do too'

Redmond

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expect a unified Democratic party in the House this session?

A: Things look awfully good. If you look at the makeup of the committees you'll see there are chairmanships down south, there are chairmanships in the center of the state and there are chairmanships in Chicago and everywhere else. I don't have any feuds that I know of. But there are problems. One of the worst things that happens is this state revenue-sharing. That's what gets section going against section. They fight for the school aid, they all fight for this thing and that thing. If there was any possible way that local governments could raise their own money, a lot of these fights would end.

Q: The death of Mayor Daley has left a gap at the top of your party. What do you think the future holds for the Democratic party in Illinois?

A: Mayor Daley certainly has to be the most important figure in the Democratic party in Illinois in the last 50 years, but you'd have to be blind not to realize people tried to make a villain out of him. I don't think it was justified in most cases. People build a devil and then whip the devil. That's what they did with the mayor. At one time our party had great support all over the state. Somehow, we don't have that support anymore. Oh, we have Alan Dixon; Paul Simon was strong — but he's in Congress now. What I see is a broadening of the base of the party. I think George Dunne — chairman of the Cook County Democratic Committee — as president of the County Board, has a different constituency than Mayor Daley had. Dunne worked with suburban people and recognizes the needs of suburbia more than the mayor did. Mayor Daley was such a Chicagoan that he thought what was good for Chicago was good for the world. We've seen that the city of Chicago alone can no longer win statewide elections. That will be the biggest single political change after the death of Mayor Daley.

Q: Did you talk to Mayor Daley about your candidacy for speaker this time?

A: Yes, he said "good luck." There was no reason why he wouldn't have supported me. He only asked me for one thing and that was the vote on the schools [to override Walker's veto of increased school aid — the measure failed by one vote]. I couldn't go along with it and he reminded me that he only asked for that one thing. I told him the election showed Chicago's interests were not always shared statewide, and I think he understood why I couldn't vote for something that would hurt my district. He knew I wouldn't hurt him, and he had no right to ask for something that would hurt me in my own district. I never knew the mayor that well; no one outside the city ever did. His was a small circle, mainly from the 11th Ward. But we had a lot of mutual friends. I always thought he ultimately would have supported me. But frankly, I wanted downstate Democratic and independent support first. If I had the mayor of Chicago first, I never would have made it.

Q: Some of your critics say that you avoided the heavy-handed political maneuvering that goes with the job of speaker by handing the gavel to former Majority Leader Gerald W. Shea [D., Riverside]. How do you respond to that?

A: What Gerry Shea did, for the most part, was represent the interests of the mayor of Chicago and that was not my role, under any circumstances. I'm very much indebted to Gerry for the assistance he gave me the last time. I didn't know too much about financing and running the staff, which is a big part of this thing.

Gerry would have loved to have been speaker. I guess just about anyone would have, although it was never one of my burning ambitions. And quite frankly, Gerry liked to preside. What

implications are such that state representatives feel they have to sponsor bills just to get reelected. That's the system. The pressure to introduce so many bills might be less if we had a longer term, maybe for six years with a provision against reelection unless you were out for one or two years. There would have to be substantial increase in the pay and pension benefits to go with that kind of a program, and I don't know whether the state could afford it.

Q: Is the legislature becoming more professional? Should it remain part-time?

A: The whole theory of our form of government is not full-time representation. You've got to have the shoemaker and the attorney and the baker to represent all segments of society. When you get into full-time representatives, you either get the total political hack that can't go anyplace else, or you run into the fellow that's very wealthy and doesn't have to be concerned about any business he might have. There is such a high turnover rate because most legislators have other jobs and find out that being a legislator is such a hassle, so time-consuming, and so expensive that people just can't afford to stay in it and do justice to their own families.

The way to eliminate some of the legislation is to keep the legislature part-time. There have been several attempts to go back to biennial budgets where every two years legislators come down to pass the budget. With annual budgets you pass the budget and you come back in six or eight months, and agencies have got to have a supplemental appropriation and more bills are introduced. The longer we're in session down here, the more money it costs, and the more government grows and the more bureaucracies are created. Everybody here is throwing bills into the hopper.

Q: Can the state get by the next two years without a tax increase?

A: I don't know about the next two years, but the first year of the Thompson administration will tell the tale of whether we can or not. I would sure hope so. If we are successful the first year, I don't see why we can't be successful the second year.

Q: What are some of the major issues that you expect to work on during this session?

A: We've got to take care of education, which has been neglected over the last four years, although there's been an increase in money. A good education system is probably one of the most important functions of government, but money isn't always the answer for that.

Q. What is your position on the death penalty?

A. I voted for the last death penalty we had. It was a tough vote. It bothered me for a couple of days after I did it, but I believe that reinstating the death penalty will have an effect. We've tried everything else. Some experts claim the death penalty is not going to reduce the

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was I going to do, trip him when he was on his way up there? He handled the job well; nobody complained he was unfair. The real operation is not just out there on the podium. In the end, I made the decisions. If there was ever a disagreement, my decision stood.

Q: What type of session do you expect the 80th General Assembly to be, and what are its priorities?

A: It looks to me like a far more tranquil session, at least in the House. This is my 19th year and I don't remember a time when there was less rankling. Obviously, we need enough money to keep the whole show running. We have to do something about the Board of Elections [see Board of Elections articles in March magazine]. We have to at least start thinking seriously about replacing the personal property tax on corporations, as the Constitution mandates. There's always talk about public aid fraud, maybe we'll look into that. There are other things. Last session the House initiated medical malpractice legislation that looks like it might have done a good job. I'm contemplating doing the same thing with products liability this year.

Q: Can we avoid a tax increase in the next two years?

A: It will be difficult. If there is a hike, my prediction is it will come in the income tax. Part of our problem is that

'Part of our problem is that when we got the income tax we weren't careful about how we spent the money. We spent it too quickly'

when we got the income tax we weren't careful about how we spent the money. We spent it too quickly. We should have tried for school funding in eight years, instead of four. We made a mistake selling too many bonds.

Q: What are some other major issues confronting the 80th General Assembly?

A: Death penalty and ERA, I suppose. There will be some reinstatement of capital punishment, and ERA will probably make it. It was floundering, but passage in Indiana will help [see March magazine for article on ERA.] Collective bargaining is another important question. There are two facets to that. One is working conditions, the other is cost. Nobody quarrels that there should be some procedure to make sure people get fair treatment. But cost is another thing. This is especially true for local governments, which are hemmed in by certain rates and ceilings which they cannot go beyond unless the legislature gives them authority. If you get into a situation where more money is requested than is being raised, you may have to lay some people off. That's the part of collective bargaining that's very difficult.

Q: What would you like to be your main accomplishments this term?

A: Be a good speaker. I have to laugh at people who say I'm weak. *Chicago* magazine said I was a "tower of putty." I'm not strong, not this, not that. Somewhere along the line I must have done something right. I was president of my class at Marquette University, I've been elected to the House 10 times, speaker twice. Somewhere I did something right. I come from a family of gentle people. I never heard an angry voice in my house. I was a pretty fair athlete; I wrestled Joe McArthy, you know. I never had a fight in my life. I figured, what the hell, if he can beat me it hurts, if I can beat him, so what? But I was never afraid to speak up. Two years ago, in the speakership election, I thought what they were doing was wrong. From a political point of view I didn't think Clyde Choate [former representative (D., Anna), candidate for speaker of 79th General Assembly] was

'Again, it's the matter of priorities'

crimes that would require the death penalty. I support the death penalty on a limited basis like the bill we had . . . when prison guards, and others in that category, are murdered. I think the state should have the death penalty again for awhile and see what happens. It may be easy to talk about a death penalty, but it's a different matter to push the button to vote yes. To vote for a bill like that, I had to think about it very hard, and I was upset about it that whole day. But I feel that I did the right thing.

Q. Do you support collective bargaining for public employees?

A. There's got to be a point for public employees to collectively bargain. However, I certainly don't favor the right to strike for public employees. There's got to be some recourse for them to get the things they need and to maintain an equal living standard with those who have that privilege. But, I don't think collective bargaining should even be discussed for certain employees like health personnel and safety personnel. I could support some form of public employee collective bargaining, but it's going to have to be a very carefully drawn bill.

Q. Will the legislature this session come up with an alternative to the corporate personal property tax?

A. I know for a fact there's one drafted by a Republican. It will take a constitutional amendment to do it, but it would seem to me that maybe we should leave it where it is — the personal property tax on corporations. I'm sure it would be very popular with the electorate.

Q. How do you view the problem of overcrowding in the state prisons?

A. One of the first considerations is the cost. Can we build a prison facility cheaper than remodeling the existing ones and still meet the federal standards of today? If it would cost a lot more to remodel, I would suggest they go ahead and build new prisons because we're going to have to have them eventually. It's sad, but true that there will always be a need for prisons. I spent an afternoon going through the Joliet prison, Stateville. Some representatives told me how terrible the conditions were. I thought the conditions weren't that bad. It was crowded but for the most part clean. It's old and there's no question that we've got to make some changes. Again it's the matter of priorities. The people in my district would probably not be happy if we had to spend more money on prisons. People want more and more services and less and less cost, and I don't know how you do that.□

'We're sliding in backwards to committee bills'

good for the party and the political decisions that had to be made.

Q: Are the days of the demagogic speaker over?

A: I think so.

Q: Is that good or bad?

A: I think you can go too far. I think the Senate has gone too far. At first, I could understand the rebellion of the so-called "Crazy Eight" in the Senate [see January 1976 magazine]. They didn't have participatory politics to the degree we have it over here. But if you fragment the party so that you no longer have party positions, it's going to be harmful. Our situation is different. I don't think the speaker will be weak after I'm gone.

Q: Will speakers in the future best serve their party and office by following your low-keyed approach?

A: I think so. I have nothing to hide. I have no great plans for anything. I have no great villainy. I'm not going to remake the world. I've enjoyed it, though. I enjoy the reputation I have at home. I prize my good name and wouldn't do anything to make my family ashamed of me. I've enjoyed being in the legislature. Where else could an immigrant's son have been able to meet the kinds of people I've associated with? Sen. Paul Douglas was a friend of mine. Jimmy Carter. Ted Kennedy. John Kennedy. Mayor Daley. George Dunne. Dan Walker. I know Gov. Thompson. Gov. Kerner was my classmate. Gov. Shapiro was a friend. Where the hell else could I meet these people?

Q: What can be done to improve the image of our elected officials?

A: Well, I'm doing what I can to improve it. We have transcripts of all the floor debates which we are sending to all the library systems. I want to make things accessible and clear. Things happen in government and you sometimes can't tell how the hell they happen. Well, we can take all the bills introduced and put them on microfilm and send that all over the state. Then, if people want to see what's going on, they don't have to come all the way down here to check. I've known a lot of government people and they are pretty good, in the main. It's our responsibility to conduct ourselves so people can have confidence in government, sure, but it's also the responsibility of the press not to go off on the stuff [Watergate] to detract, to undermine, to destroy the confidence of people in government.

Q: What about abolition of the personal property tax for corporations?

A: I don't see anything happening with it this session. What do they do if you don't replace it? They don't put you in the gas chamber. I would anticipate a revenue subcommittee of the House will study it.

Q: One of your goals has been a reform of the legislative calendar in an effort to avoid the mad rush at the end of each session. Will we see any change this year?

A: Well, we've had all sorts of proposals, some limiting bills per legislator to about 10 or 20. I think that's a hard thing to do. In Congress there isn't any regular sponsorhip, for the most part. They submit what they want to and it goes to the Rules Committee and finally, it's the Rules Committee that decides what gets to the floor. Iowa, I believe, has committee bills exclusively. I don't think they have individual sponsorship. It looks to me like we're sliding in backwards to committee bills rather than individual sponsorship. If all those proposals on one subject were put together in committee, they would all come out of committee as one bill. We're tending that way. Whether it will be accomplished this session or in a couple of sessions, I don't know.□

By WILLIAM L. DAY

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Much of today's General Assembly structure comes from COOGA of the sixties

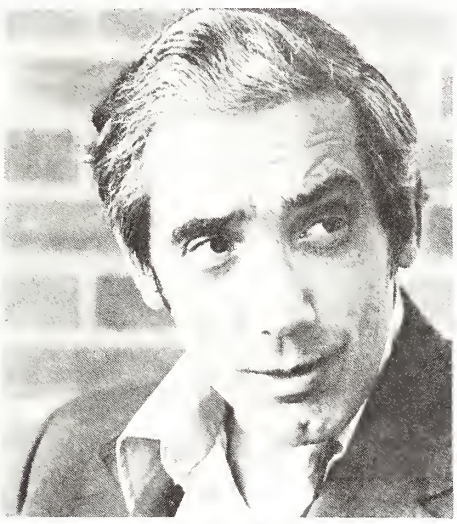
COOGA revisited

Commission on the Organization of the General Assembly, Representative Harold A. Katz, Chairman. *COOGA: 10 years later/ Report on the implementation of the 87 recommendations made in 1967 by the Illinois Commission on the Organization of the General Assembly* (May 1977), 60 pp.

HAROLD KATZ was the sponsor of the legislation in the 1965 General Assembly which created the Commission on the Organization of the General Assembly, and he was — and has been — its chairman, so that it would have been logical to call it the Katz Commission, and many did, except that former Sen. W. Russell Arrington insisted on calling it "COOGA," an acronym so distinctive that it stuck and now is officially acknowledged in the title of the commission's latest report.

Looking back, what Harold Katz accomplished as a freshman legislator in 1965 in obtaining passage of H.B. 163 was remarkable. He had two things working in his favor: (1) support for the idea of streamlining the legislature by one of the most remarkable men of our time to sit in the Illinois Senate, W. Russell Arrington, a Republican multimillionaire from Evanston, and (2) the extraordinary events that had led to the election of a House with 118 Democrats and 59 Republicans, many of them able, ambitious new members, exemplified best, perhaps, by Adlai E. Stevenson III, who launched his political career by topping the Democratic ticket in the 1964 at-large election for the House *(see accompanying box).*

Would Katz — a Democrat from the Republican North Shore — have ever made it to the legislature without the unprecedented at-large election? Certainly if he had, the legislature would not have cottoned to his reformist ideas. It had been the kind of a legislature that frequently bypassed its own committees by advancing bills without committee consideration.



Harold Katz

But Katz was not a greenhorn about Springfield. He had been one of the young attorneys whom Dawn Clark Netsch (then Dawn Clark), as legal aide to Gov. Kerner, had summoned to Springfield at the close of each session to help her review bills. Kerner's vetoes made an excellent record for him from the viewpoint of Democratic party liberals; Ms. Clark saw that the messages were printed and easily accessible.

A Kerner veto, as it turned out, brought Katz to the House along with many other high-minded newcomers bent on reform. But the Senate was still unrepentant and unreformed in 1965. Yet even there unusual things were happening, and the most unusual was the election of Arrington as president pro tempore of the Senate. Arrington had served in the House from 1945 to 1954, when he was elected to the Senate. As a Legislative Council member, Arrington along with then state Rep. Abner J. Mikva, had sponsored the Legislative Staff Internship Program which was to teach legislators the usefulness of staff and provide much of the early talent for staffing.

A bill similar to that sponsored by Katz had been introduced by Harris W. Fawell, a Republican from Naperville who in 1963 had been voted "best freshman senator" in a poll of downstate newsmen. Although Arrington helped push Fawell's bill, the Katz bill was eventually signed into law by Gov. Kerner. Fawell became vice chairman of the commission, and Marjorie Pebworth, a first-term Republican representative, became secretary. Arrington as president pro tempore of the Senate was an ex officio member as was John P. Touhy, then speaker of the House, now chairman of the Democratic State Central Committee. (The 1977 publication lists the full membership of the original COOGA.)

It is a measure of the unusual successes of COOGA that a current reading of how the 1967 recommendations have been implemented produces a "so-what-is-new?" reaction. The Senate, for example, installed electronic voting equipment in 1974 — seven years after the recommendation was made and at least a quarter of a century after the House stopped relying solely on oral roll calls. But when this sensible suggestion was first made by COOGA, Senators refused to listen.

Other procedural changes include a schedule of legislative deadlines to move bills ahead toward the traditional June 30 adjournment in order to avoid a crush of business, the "logjam" in the closing days and nights of the session.

WILLIAM L. DAY
As research director of the Legislative Council (1960-1974), he served through a period of legislative reform.

Movement of bills to passage without a committee hearing is almost unheard of nowadays, but it was common practice in 1965 and before. COOGA's first report said that about a third of the bills in 1965 moved to passage without ever being considered in committee. Proxy voting has been outlawed in committees although some say proxy votes are still accepted in some Senate committees. Bills carry on their face a synopsis; bills must be processed by the Legislative Reference Bureau to assure correctness of form.

Recommendations to enable legislators to do their job better have also been implemented. When Katz came as a freshman representative he found he had only a desk in the chamber to work at, and he had to depend on help from a stenographic pool to answer letters. Legislators now have offices and secretaries in Springfield and money to help cover the cost of an office and staff in their districts; the committees and the leadership have space to meet and work in Chicago; and the staff has been expanded in the auxiliary agencies to the General Assembly such as Legislative Council, Reference Bureau and State Library government reference section.

Much of what COOGA proposed had to wait for constitutional change, and this change started with another commission, the Commission to Study the Constitution, chaired by the same Marjorie Pebworth who was secretary of COOGA. She died from diabetes and overwork before the resolution to call a constitutional convention was adopted by the House in 1967. In a sense, the Constitution of 1970 that resulted is a memorial to the efforts of this woman who in her youth worked for the Indiana Legislative Reference Bureau in Indianapolis (she was a Hoosier and is buried in that state) and who became familiar with the Illinois

W. Russell Arrington

Setting the stage for legislative reform

The chain of events which eventually led to COOGA and a new Constitution began in 1948 when Adlai E. Stevenson, father of Adlai III, took office as governor. He wanted a new constitution, but the legislature would not place the question of calling a convention on the ballot, so Gov. Stevenson settled for a "gateway amendment" to make it possible to amend the 1870 Constitution which had not been changed in 40 years. The nonpartisan campaign which led to adoption of the 1950 gateway amendment was headed by a Chicago lawyer, Samuel W. Witwer, later president of the Constitutional Convention of 1969-70.

But it was Gov. Stevenson's successor, Gov. William G. Stratton, who engineered the first fundamental reform of the legislature in half a century by obtaining legislative approval of a reapportionment amendment in 1953 and its popular ratification at the polls in 1954. The legislature had last been apportioned in 1903. From then on, Chicago's growing population threatened to give Chicago and Cook County control of both houses if population were the basis for the apportionment of districts as the 1870 Constitution directed, but downstate lawmakers sidetracked apportionment bills. The Stratton amendment offered a compromise: the House was to be apportioned according to population (which could give Cook County control), but Cook County was to be limited to 24 of the 58 Senate districts with Chicago getting 18 of the 24 districts.

Enactment of a reapportionment law in 1955 was pushed through under threat of two extraordinary provisions written into the 1954 reapportionment amendment: First, if the legislature did not act by July 1, a bipartisan commission would make the apportionment. The commission was to consist of five Democrats and five Republicans, chosen by the governor from lists submitted by the central committees of the two major parties. Second, if the commission failed to reapportion by December 31, all 177 members of the House were to be elected — not by districts — but at large across the state. It was thought prudent to write into the reapportionment amendment the fallback on the commission and at-large election in case the legislature again failed to reapportion.

When reapportionment was required again in 1963, a bill was passed by the Republican majorities in both houses, and then an unanticipated event occurred: a veto. Gov. Otto Kerner's veto message cited disparities among districts in population such that the largest district had 74 per cent more population than the smallest. He cited as an example Lake County, with 293,656 population and growing, which constituted one district. Twelve other districts, he said, had a population less than half of this district.

The veto occurred after *sine die* (final) adjournment of the legislature, and there was no chance to act on it, and anyway the Republicans lacked the necessary two-thirds majorities required by the 1870 Constitution to override. So, the commission was formed. Republican and Democratic state central committees submitted their lists of 10 names each to Kerner, and he appointed five from each. Commission negotiations continued for months behind closed doors. As the December 31, 1963 deadline approached, the press kept a vigil on the conference room in Chicago; midnight passed — no plan. Illinois awoke on New Year's Day 1964 with a special hangover, the prospect of an at-large election for 177 state representatives.

Instead of a Republican majority in the House, the Democrats won a top-heavy majority of 118 to 59 Republicans in the November 1964 election.

legislature as an unpaid lobbyist for the League of Women Voters.

The efforts of Arrington, Katz, Pebworth and many others have changed the Illinois legislature from an assembly that reacted and often went along with the recommendations of the governor to a body which itself initiates and fights for its own conceived programs. One may or may not admire overriding the governor's vetoes of the laetrile bill and the bill to ban abortions at public expense, but what one needs to realize is in the century from 1870 to 1969 only four vetoes were overridden. The 1967 COOGA report found that "Executive vetoes have killed between an eighth and a sixth of the bills passed by the Illinois General Assembly in recent sessions." Because the legislature was in the habit of adjourning *sine die* — that is, finally and without recourse — on June 30, it never had the opportunity to act on vetoes. As a result of COOGA's recommendations, the General Assembly found it could return in the fall of 1967 and 1969 to act on vetoes. And so on January 8, 1969, in its dying hours, the 75th General Assembly overrode Gov. Sam Shapiro's veto of a legislative pay raise — the fourth override in a century. Overrides of vetoes have become much more usual since, in part because of the relaxed requirement to override in the 1970 Constitution (a three-fifths vote in each house instead of two-thirds) and in part because of the conflict between the governor and the legislature.

Gov. Richard B. Ogilvie deserves the credit for implementing another COOGA recommendation, that no legislative agency should participate in pre-budget hearings. COOGA in 1967 had charged that as a result of this participation, "Whether budget figures represent choices made by the Governor or choices made by a legislative commission is . . . a question shrouded in mystery." But the legislative Budgetary Commission survived until Ogilvie created a Bureau of the Budget and denied the commission access to agency budget requests in the preparatory stage. In 1972 the legislature abolished the Budgetary Commission or, at least, reshaped it into the Economic and Fiscal Commission.

The COOGA report is evidence of the ability of a state legislature to learn how to manage its business better and to secure changes in the Constitution, but the success of COOGA and others in converting the legislature from a reactive to an initiating body has brought about extreme demands that legislators a generation ago would have considered outrageous. Consider these figures:

	1963	1975-76*
Days in session: House	70	177
Days in session: Senate	72	157
Bills introduced	2,916	4,584
Bills enacted	1,444	1,297
Per cent enacted	50%	28%

**To July 1, 1976*

It may be that it takes this much time and effort for the legislature to perform as a true check on the executive branch of state government. But there are signs that the legislature is losing its character as a body which represents the average citizen and shares his or her concerns by viewing legislating as a secondary occupation. In the 1963-64 session, only seven members listed their occupation as "legislator." In the 1975-76 session, 75 did so. What this means, of course, is that these individuals consider being a lawmaker their primary occupation. Theoretically this should reduce their independence. Has it done so? This is hard to measure, but on the whole we have a legislature that seems much more independent than the legislature was 20 years ago. At least, it is more independent of the governor, but it may be more susceptible to special interest groups.

COOGA: 10 years later documents a tremendous enhancement of the capacity of the legislature to play its role as one of the three branches of state government

It is undeniable that *COOGA: 10 years later* documents a tremendous enhancement of the capacity of the legislature to play its role as one of the three coordinate branches of state government, by reforming procedure and by equipping legislators with the tools to do a good job. But as a lawmaking body, the legislature is far from perfection. One can overlook, perhaps, a drug conviction thrown out in court (as happened last fall in Cook County) because the legislative act misspelled the name of the drug. And perhaps the achievement, some decades after the idea was first broached, of a consolidated schedule of elections is great enough to excuse the errors in the bill that was passed last spring — halving the terms of some elected municipal officials for example. (The 1977 fall session corrected the errors.) But why hasn't the legislature ever gotten around to implementing COOGA Recommendation No. 75, for "adoption of an official code of laws and for its continuous revision as to form?" The 1977 report merely says, "This subject is being explored . . . ." (*See* Richard M. Hull, "Computer paves way for new code of Illinois laws," Feb. 1976, pp. 17-19.)

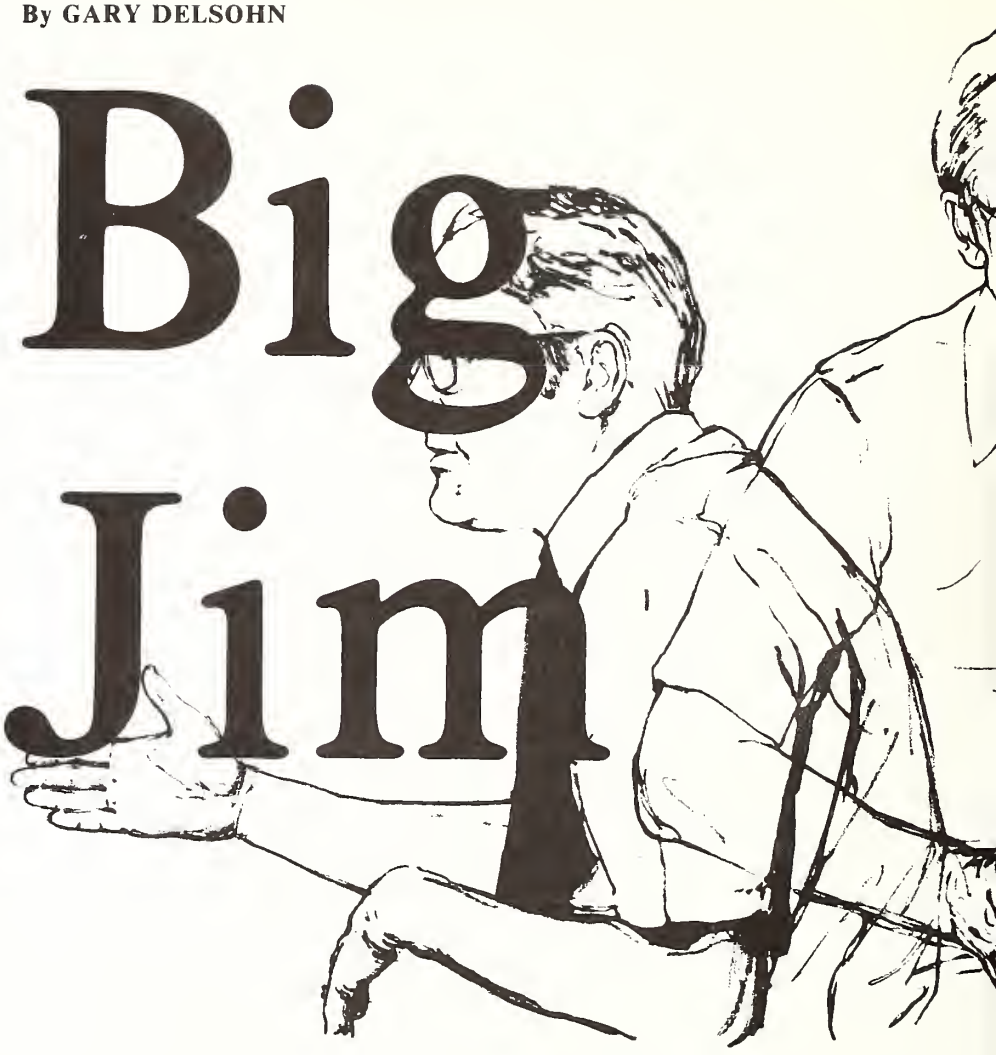
Some legislators object to the governor's amendatory veto, but it was created as an attempt to provide a quick solution to technical errors in bills, and these errors do continue to occur. From 1963 to 1975, in response to impetus from COOGA, the professional staff of the legislature, excluding its auxiliary agencies, increased from a score of people to more than a hundred, and expenditures by the legislature on itself (again excluding auxiliary agencies) rose from $6.9 million to $23.6 million. Why is not the legislative product technically better? Who reads bills before they are finally acted on?

Why did the legislature wait until the 1977 fall session, which was almost the last minute before a federal deadline, to pass amendments to the unemployment compensation law so as to avoid heavy federal tax burdens for noncompliance? Why did the legislature take 14 months to agree on a constitutionally and politically acceptable State Board of Elections bill?

In what some still call the "good old days," the governor of Illinois, the mayor of Chicago and legislative leaders worked out the answers to problems of this kind — something that staff, no matter how brilliant, cannot do. Perhaps the answer lies in the fact that when Dan Walker was in the executive mansion (1973-1977), Illinois had no governor in the traditional sense, just as today Chicago has found no equal to Richard J. Daley as a mayor. Or it may well be that this new kind of a legislature, one that does not react but initiates, still has to evolve its own internal patterns of leadership and problem solving.□

By GARY DELSOHN

Big Jim



GOV. JAMES R. THOMPSON had just finished his first legislative session when he gave this July 6 interview. He's proud of what passed and is determined to push his crime package through in the special session this fall. And, of course, he talks about his political ambitions.

Q: With your first legislative session under your belt, how would you rate your first six months in office?

A: I'm pleased. I said from the beginning that my first legislative priority was and is a balanced budget. And the General Assembly gave me a [nearly] balanced budget. I think that's a remarkable achievement. I also compliment the General Assembly for the job they did on their own in bringing in a truly balanced budget, because in addition to adhering fairly closely with my recommendations, they also passed a number of revenue-producing proposals, like the out-of-state income tax and the speedup of the inheritance tax, that weren't in the March budget book.

In terms of criminal justice legislation, I'm disappointed at the failure of Class X. I know I had the votes for Class X, I just know it. And I know that people of Illinois wanted Class X. And I think the media of this state, which have been pushing HB 1500 [sponsored by Rep. L. Michael Getty, D., Dolton, after two years of study and work] don't understand what HB 1500 is all about. I was willing to compromise all session. I never said it was Class X or nothing. I said I would take the best parts of Class X and HB 1500. We had a bill to do that. It was killed in the House. House people said it was 1500 or nothing. And I think it was wrong for the speaker to rule the bill out on germaneness. He had never used that power on any other piece of legislation, so clearly he was reaching.

Q: What was your initial reaction when you learned what Speaker Bill Redmond had done?

A: I was angry.

Q: Did you see that coming?

A: Sure, I knew it was coming. I knew they didn't have the guts to call it on its merits. I knew Redmond was offended that HB 1500 was sent back to committee in the Senate. But I wasn't directing Senate strategy. It's my guess that 1500 was sent to committee in the Senate because our good faith efforts to attempt to combine Class X and HB 1500 were scuttled in the House. Getty, Katz [Rep. Harold Katz, D., Glencoe] and that crew had such pride of authorship and had the blind allegiance of the Chicago press editorially. Out boomed the editorials from Chicago saying that Class X was just a cheap publicity shot of the governor and HB 1500 a well-thought proposition. Well, the plain fact is those newspapers hopped on HB 1500 early and were embarrassed to get off it. But I understand how the newspaper business works. That's okay, that's fine. In October we'll put in a new bill and it will be voted up or down on its merits, I assure you.

Q: Is it your aim to keep the veto session going until you get your crime bill?

A: You bet your life. I think the implicit promise of this session of the General Assembly has been rational criminal justice sentencing legislation. That's what all the editorials have been saying. They said it's been a pretty good session, with the exception of HB 1500 not getting passed, and Thompson having his glamorized version of Class X in there, you know, Thompson should mend his ways. Well, Thompson's not going to mend his ways.

Q: What about your other priorities?

A: Energy, another one of my proposals, is one that, I admit, I'm a little bit in the dark on. Most of my energy package had been languishing in committee, and I was willing to accept it again in October. I thought we could afford to wait and see what the design of the federal energy program is.

In the field of ethics, I was disappointed. In retrospect, I think I made a mistake in putting in an ethics proposal that was too sweeping, too complicated. I bit off more than I could chew and thus

GARY DELSOHN
Gary Delsohn is state house reporter for the *Arkansas Democrat* in Little Rock and recently left the Springfield Capitol press room.

violated one of my cardinal rules of a rookie governor: Don't bite off more than you can chew. I bit off more than anybody could chew, probably on either side. And it went down in the first committee it hit on a party-line vote.

Q: You say it was a party-line vote as if that's what sunk it. You are aware Republicans joined Democrats in criticizing the bills?

A: I know, they didn't like them, but they voted for them.

The other priority was efficiency or sunset legislation. I backed the Bartulis [Rep. A. C. "Junie" Bartulis, R., Benld] bill because I thought it was the best. I helped draft it. There are two competing Democratic proposals, and as I understand all three will probably come out in October. Maybe we can get a combination of the best.

The October session has to be taken into account. It won't be so much a veto override session, because I don't anticipate many vetoes and very few fights about vetoes that are made. But it will be a time to generate new legislation or revive legislation in committee.

Q: You have gotten almost all of what you wanted from the legislature, your press for the most part has been good — you seem to be sailing along. Surely, there must have been some disappointments in the first six months.

A: Lack of time. I really didn't understand how much time I'd have to spend with the legislature on a one-on-one basis with individuals. You simply have to. Legislators have quite legitimate concerns, and they feel sometimes the only way they can make their views known is to come in here and talk to me. And they're entitled to. I campaigned on the promise that they could come through that door. That took a lot of time, especially in the last weeks of the session, just as cabinet selection took an awful lot of time during the first part of the administration. Just presiding over the Senate for six weeks took an awful lot of time. So I was left during my first six months with a sense of frustration that I wasn't reading enough, that I wasn't keeping enough on top of policy matters within the administration. And then I was damn glad I had selected as good a group of cabinet members as I had, because they were essentially running the day-to-day operations of government while I tended to the budget and legislative duties. I haven't been in on the detail of program development as I would like. I felt a sense of frustration about not being able to fill as many boards and commissions appointments as I have. And I haven't had chance enough to look at other governors and see what other states are doing. I haven't had time to look into the universities of this country to see what they're thinking. I'm going to try to make that up.

And I haven't had enough chance to be with my family. I haven't had a chance to be at home, to see my mother and father, or brothers or sister. It's going to change. I'm going to review the summer schedule and if we're over-scheduled for county fairs and stuff like that, I'm cutting back. After six months of daily grind at this desk, my family deserves some consideration. This is not an election year. There's no reason on earth for me to be driving myself and Jayne day after day when we've worked hard the first six months. People don't have any conception of how hard public life really is. But you're foolish to push yourself, because then your efficiency diminishes. If I'm strung out, I can't be a good governor.

Q: Back to the legislative session. You managed to get by the spring without any major tax hikes. Can you do it again next year?

A: Yes. In the first place, because we had a balanced budget this year, we'll be going into fiscal year '79 with a surplus in the treasury to bring the available balance up. We don't have hanging around our necks anymore the deficit that Walker left. He left a $78 million deficit which built into the base for fiscal '78, and there was no way to avoid that. That means when I start constructing the fiscal '79 budget this winter, we start $78 million ahead just by having rid ourselves of the deficit base. That's $78 million in new money. It will enable us, for example, to fully fund the schools next year, for the first year. And that's not money I've been hiding. I've said all along if they'll pass a balanced budget

this year, we would get rid of the Walker deficit base and start out $78 million to the good. And, if growth and revenues come in as we anticipate, the lottery picks up, and the revenue comes in from the new General Assembly measures, I'll be in a position to allow for some program growth. I wasn't in a position to do that this time and I was sorry for that, but we didn't have the money. So we'll fully fund the schools next year, we'll build a couple of prisons, we'll make major capital improvements. Fiscal year '79 ought to be a good year.

Q: Is there any chance for some significant tax relief or tax reform for Illinois in the immediate future?

A: Well, I've asked the Illinois Fiscal Commission to examine long-term revenue and appropriations for Illinois and to take a look at the distribution of the tax burden and to make suggestions to me. But I don't see any immediate tax relief. The difficulty is that in order for tax relief to be meaningful to people, it would be so costly to the state in a tight year that we'd be trapped. For example, there was a proposal by Totten [Rep. Donald Totten, R., Hoffman Estates] to index the income tax exemptions according to cost-of-living raises. I couldn't support it; I told Don that. I favor it in principal, but it would have offered each taxpayer and their spouse about $1.50 in tax relief and cost the treasury millions. Even Carter's $50 rebate was laughed at as meaningful tax relief. How the hell could I come in and offer a buck-fifty?

Q: What about some local property tax relief? A measure that died in the House would have allowed local school districts to levy an income tax.

A: That was a trial balloon largely, and I thought it was worthwhile — as a trial balloon — to see what folks thought about substituting district income taxes for district property taxes. But major steps of that kind ought to await the Fiscal Commission's report on total tax burden. There's constant pressure to remove the sales tax on food and drugs. [A bill was introduced again this session, only to die early.] Sales tax is regressive, and to remove the tax is a worthy social goal. But the revenue loss in removing the tax on food and drugs is about $340 million, and nobody has any notion about how to replace that, except with a rise in the income tax.

Sometime our income tax is going to have to go up. We've not had an increase in the seven years since it's been imposed. There has been no increase in the sales tax in that time either. No other major industrial state has gone seven years without a tax increase of some kind. We've been lucky in Illinois. We can go another two years without any kind of tax increase. At least that's what I'll propose: no tax increase this year, no tax increase next year. Sometime, somewhere in the future somebody's going to have to impose a tax increase of modest proportions. I think the people will live with that. They don't expect to go forever without a tax increase. They're smarter than that. But there's no point rushing into it before it's needed. The easy way to run government is to raise taxes to raise as much revenue as you want to spend, but I don't believe in doing it that way.

Q: Is there any chance of changing the income tax to a progressive rate? It's now regressive since it is a flat 2½ per cent rate on all persons, regardless of income.

A: No. It would take a constitutional amendment to do that, not just the action of the legislature. And I don't believe the people of Illinois are ready for a graduated income tax and neither am I.

Q: Switching gears; who are the key people you have relied on in the administration?

A: Fletcher [Jim Fletcher, deputy to the governor]. His role in the first six months of this administration has been largely overlooked. And it's been one of an extraordinarily critical nature. It was Fletcher who worked out the settlement of the AFSCME negotiations in what I think was a precedent-setting labor contract for public employees, one that left Republicans and Democrats shaking their heads in amazement. It's a very fair, realistic contract that says, "If we have the money, we'll give it to you. If we don't have it, we don't give it to you. We're not going to make false promises to you." Fletcher played a key role in that. Fletcher played a key role in the Crosstown agreement; Fletcher played a key role in the last several weeks of legislative negotiations. He is by nature and by instinct a negotiator and a compromiser, a good man to bring people together, and he's had legislative training. So I rely heavily on him. I would say Fletcher, Mandeville, Schilling are key policy advisers. Then there's Paula Wolff and her people. [Robert Mandeville is director, Bureau of the Budget; William Schilling runs the governor's Springfield and Chicago offices, and Wolff works on reorganization.]

Q: Does Fletcher or anyone else have free rein to make decisions and take action? Do you communicate constant-

ly with him?

A: He has free rein to put a package together. And then bring it to me. I don't think there is a day that goes by that I don't see or talk to Jimmy Fletcher.

Q: Your last cabinet appointment, of John Kramer, a 28-year-old Democrat whiz, originally drew quite a harsh reaction from Republican legislative leaders. Yet, after you finally named him, you seemed to relish the fact that he's not a dyed-in-the-wool Republican.

A: No, I didn't relish it, but I was a little put off by the fact that when I originally planned to announce his appointment, a number of Republicans objected on the grounds he wasn't a Republican. Because, in their words, it was the biggest plum of the administration and it should go to a Republican. Now, I want to be very precise about this. First of all, I understand that feeling and I'm not putting it down. Republicans have a right to expect that when they nominate and elect a governor that some of their people will be put into sensitive policymaking positions which are part of the administration team. And it's been very frustrating for the Republicans of Illinois to see so many holdovers. But that was a problem that had to take second place to the legislative session and getting the budget through.

I thought John Kramer was the best person available to me in the nation. So when Republicans say to me the post should go to a Republican, I say to them, "Do you want good transportation?" They say, "Yes." "Do you want good roads in your district?" "Yes." "Do you want to be able to recommend people to the Department of Transportation for patronage positions and see them hired because the department's running smoothly because Thompson's in control of it?" "Yes." And I say to them, "You just let me pick the secretary of transportation then. As long as he's a Thompson man now, I don't care what he was before or will be after."

Q: You've repeatedly said people want less government interference in their lives. You've even said that you felt you would be reelected as long as you did nothing bad to people in the two years. Has that been your approach to the office so far?

A: That's a bit of an oversimplification, I should clear that up. We were kicking around this legislative session and trying to come up with what the issues would be in 1978. And I said I didn't know, but I didn't do anything bad to the people. That sounds like a gross oversimplification, but people are so fed up with government intruding in their lives that at some point they have said, "Hey, we're competent adult persons, we don't need government telling us what to do all the time." I think there's a feeling out there that if you can just relax government a little bit and let people run their own lives, they'll be happier. So I'm not one who thinks we should be charging in with 2,000 new laws every year to tell people what to do. Save money and get off the people's backs. I think maybe that is the issue. Give us a little peace and quiet.

Q: Back to the budget. How did you convince the legislature to give you a balanced budget when no other governor in recent memory could do so?

A: They could see it. I began hitting the pavements early and saying, "Hey, friends, we're estimating that at the end of fiscal '77 we've got $48 million in the bank. Now, if you overspend in the same proportion in fiscal '78 that you have for the past three years, we're going to be broke. It's not there." The first reaction on the Democratic side was "Thompson's hiding revenue." You can't hide revenue. And I kept driving that point home. But they said Bakalis [Comptroller Michael Bakalis, a Democrat] said it's going to be $110 million at the end of the fiscal year, rather than $48 million. And I said Bakalis was wrong. And the fiscal year caught up with him. He went from an estimate of $110 million last spring down to a low estimate of $52 million, which is what we came up with. We said $48 million all year long. So we were $4 million off. That's not bad on a $10 billion base. So Mandeville was a genius and Bakalis was wrong. And as the year went on, it became clear Bakalis was wrong.

They finally woke up in the legislature and said, "Hey, if we appropriate based on Bakalis' figures we may look like fools next year." And when they finally understood the basic economic fact that when we finally get rid of the deficit base we'd have a better year, well, they're people of integrity. They aren't going to spend money that's not there. And when they found out we were willing to compromise with them on issues that were important to them, like the Crosstown expressway, they saw they had a governor who was willing to accommodate them. That's part of the legislative process; the nature of the process is to compromise. And I think they took that in good faith. I think my conduct in presiding over the Senate had a great deal to do with acceptance of my programs. I didn't screw them with kinky parliamentary rulings. I played it straight; I got to know them. I didn't hesitate to pick up the phone and call Hynes or Madigan or Redmond [legislative leaders].

Q: How much did the intransigency on both the governor's part and the legislature's part the past four years have to do with your apparent success at working congenially with the General Assembly this spring?

A: I think it had a lot to do with it. I campaigned on the notion that we had to end the confrontation. If people started talking at the beginning of the session about the paucity of my legislative program, well, it wasn't lean. It was appropriate, I think, for a rookie governor with a Democratic legislature. Balanced budget, ethics, crime, energy and efficiency. That's not bad. That's a five-point program. I don't have to have 2,000 bills to have a legislative program. Some of the good bill ideas can come from the legislature. That's what they're there for. I'll take what I want and reject what I don't want. That's part of the process. But I deliberately sought to diffuse the atmosphere and accommodate people.

Q: What about the criticism that you compromised too much? That Crosstown was nothing more than a politically expedient deal at the expense of Downstate and Cook County suburbs?

A: Of course it was a politically expedient deal. That's my job, to respond to the things that need to be done. If you have a chief executive or a legislature that won't respond to the public's needs, well, then they're not politicians in the true sense of the word. People have the right to have things decided. That thing had dragged on for 15 years. Look at what's been achieved as a result of that deal. There'll be an immediate infusion of $115 million into Downstate for the road program. It will go in next year, Congress just voted it. So Downstate's got nothing to complain about; they got their money first. The Burnham Corridor will be a long time building. And the size and extent of it, and how much it will cost are in the future. So the city took it on the come.

Downstate people who complain about it have a hell of a nerve complaining about it because the city was willing to take second place. The money on the table went Downstate. The Burnham Corridor's got to go through environmental impact statements; it's got to go through litigation. It takes time to plan a highway of that magnitude, and I don't know where it's going to go or how long it's going to be, but I know I got my money for Downstate.

Q: What about the feeling among some suburban legislators that their districts got overlooked?

A: Hell, they got the major benefit out of the Crosstown transfer. By law, the $115 million designated from mass transit to the highway fund has to be spent in the Chicago metropolitan region. So the statistical metropolitan area around Chicago benefits from the Crosstown agreement. I know some collar county senators are upset about the RTA [Regional Transportation Authority], and so am I. I'm auditing the CTA [Chicago Transit Authority], and I've warned Chicago Democrats and the RTA that if they don't get the RTA house in order — in terms of plowing back money into the suburbs — they're going to find themselves with legislation gutting the RTA, and it will be their fault. But I don't think that's ire that should be directed at me. I wasn't here when RTA was signed. That was Walker.

Q: Did you, as some legislators and Bakalis and Redmond and some newspapers claimed, get a pass on your budget as a result of the Crosstown deal?

A: I think that's an oversimplification. Democrats organized the House and Senate. They had the votes; they had the horses. You have to accommodate them to get your programs passed. So you have to make agreements that give them some of what they want to get some of what you want. The first thing people forget is that jobs and revenue in Chicago mean jobs and revenue for the rest of the state, too. Chicago's part of the state. Now, when Chicago leaders come down here and say they want things for Chicago out of proportion to what the state is getting, I say "no." That's where I draw the line. That's the difference between me and a Mike Howlett sitting here. Or me and a Mike Bakalis. They're much more likely to go along. I, at least, make them strike the deal. They recognized the realities of power; they're not fools, they recognized the delicate balance between votes in the Assembly and the veto and the override. That's the way the process works. And I think it worked out well.

It was important that I went to the educational establishment early and said, "Here's the governor's bottom line for education. Start preparing for it in your budget." And there's not a school district that can't live with the budget I gave them because they are prepared for it. And it was important that I made 21 speeches around the state defending my budget. Twenty-one goddamned grinding speeches, over and over again, with the charts, until I was sick of them and was seeing them in my sleep. But they had an affect. It's the only way to do the job.

Q: The past session was almost unanimously hailed as one getting tough on crime — a doomsday for criminals. Do the get-tough measures, including yours, signal that we have given up the fight on crime's root causes and are now turning our emphasis to punishment and retribution?

A: I don't take that approach. But some things have to be considered. First, while the root causes of crime are serious, it's foolish to say we're going to go after the root causes of crime. But until we solve them, we're going to continue to go out in the street and get hit over the head. That's just nutty, really. To say that until we eliminate poverty and ignorance and lack of employment and lack of adequate housing, we're not going to do anything about putting bad guys in jail is just plain nuts. And I'm not going to have any part in that. We have more crime now with all our social welfare programs and our extraordinary commitment in billions of dollars to our welfare programs, than we did in the midst of the great depression, when we didn't have any programs. Those programs were not meant to fight crime. They were meant to fight poverty, ignorance, lack of housing and employment, and to a greater or lesser degree they are doing that. But crime continues. That ought to teach us something. That ought to teach us that we can't eradicate all the root causes of crime in one or two generations, and that maybe we don't know as much about the root causes of crime as we think we do. It's an awfully easy shuffle to say, "Hey, it's all just poverty, ignorance, lack of employment and lack of housing when guys standing around on a corner decide to go hit somebody over the head." We've got to continue our social programs to try to alleviate what people think are the root causes of crime, but at the same time we've got to treat the symptoms, the hitting over the head. The only way I know of doing that is to take those people out of society and put them into jail. And if it costs a little more money to take those people out of circulation to protect ourselves, then people are willing to spend it. They don't want a prison in their backyard, of course, they want it out in the country, but even that can be achieved.

Q: For the most part, you've received favorable press, even laudatory. How have you responded to the criticism, though? There were some very critical editorials last spring, particularly from Rockford and Lindsay-Schaub.

A: Oh, I got mad, like any other human being. I thought the Rockford editorials were unfair. I thought the first one made a valid point. It said I shouldn't have gone to the Kentucky Derby. Well, I don't think that was any great cosmic issue. But after I got the word from some friends who thought the same thing, I stood up at my dinner and apologized. That should have been the end of it. The rest of that editorial was filler. The next time, they came out and blasted me twice as hard, but this time, I thought, unfairly, because they just dredged up all the old stuff again. I don't know why. Who knows what compels people to write editorials? The

Chicago papers have, I think, been unfair in their assessment of House Bill 1500 and Class X, but I understand why. But, by and large, I think the press treatment has been fair. Where the criticisms have been, I've tried to respond to them. Some of it's overblown; some of it's my fault. I had to open my big mouth during the campaign and talk about a big car to get my big legs in. So that was hopped on as a symbol, and we spent months agonizing over what kind of cars to get. Finally, I decided I'd order the Checkers, and to hell with it. I shouldn't have allowed myself to get into that position, but that's part of being a rookie. That won't happen to me next time. But I also came into the office with the impression that if you were up front with everything, you were safe. That's not necessarily true.

Q: You spoke a great deal about reorganization during the campaign and you took some action once the session started. What comes next?

A: We've been conducting hearings all around the state. I think we made a good start on Law Enforcement and the Department of Administrative Services. I used the administrative order technique that brought the General Assembly into play on ratification. I'm going to take a look at the transcripts from the hearings and listen to recommendations, but I'm not in a big hurry to change government for the sake of change. Number one, I don't think it's a money issue. I'm not convinced that reorganization is going to save money. I never said so during the campaign, and I'm glad I didn't promise that.

Q: What about your well publicized presidential aspirations? Is that going to be an issue in 1978, that you'll leave Illinois in the middle of your term as governor to run against President Carter? U.S. Sen. Robert Dole [R., Kansas] recently said he and you were going to seek the Republican nomination in 1980.

A: He was just being kind. Anytime there's a Republican governor from a major state people say he's going to run for president. There are only 12 Republican governors, we've got to stick together. And I'm a fresh face, and this is the biggest Republican state, so it's just natural.

Q: Yes, but you certainly haven't hindered the talk and speculation. You've said that you've wanted to be president since the age of 11.

A: I want to be president, sure. That can wait. I'll let the people decide that. There's an extraordinary difference between the carping of some Democratic politicians that I'm lusting after the presidency and the reaction of people in the street. When I march in parades and people say, "good job," or "we're going to vote for you for president," or "you ought to run for president," I think I'm entitled to take that as one sign that any presidential aspirations on my part are not meeting with a whole lot of opposition out there. And if that's so, I'll assume it will be reflected at the polls in 1978.

If I were to decide to run for president, I don't think the state of Illinois would fall apart. But I haven't decided; it's too soon to tell. I can't tell you what the issues in 1978 will be, or if I'm going to be reelected or by what margin. And the more I study presidental politics, the more I'm convinced that in addition to planning intelligently and perceiving public moods and notions, where the issues are and where the present administration is right and wrong, there's an awful lot of luck involved. I mean, you've got Muskie crying in the snow. Nobody planned that. Romney saying he was brainwashed. Nobody planned that. You've got Jerry Ford saying Eastern Europe isn't under Soviet domination. I hope to hell nobody planned that. You've got Earl Butz telling an off-color racist joke. Nobody planned that. You've got the Ford campaign failing to pay enough attention to southern Ohio and failing to get Reagan to work Texas while we carried Illinois. Somebody should have planned that.

Who knows? You had an obscure, unheard-of ex-governor in a small state in the South go from that position to the presidency in two years. Now, he worked hard in that time. And he's a damn smart politician, one of the best around. Carter is shrewd, cunning, tough, hard-working, with good people. I don't know if he's going to fall on his face in two years. He had a lot of luck, too. So you can't calculate presidential ambitions with preciseness. To give me a shot at the presidency in '80 or '84 or '88, the worst thing for me to do would be to sit here and calculate. The best thing to do is be a goddamned good governor of Illinois, get reelected overwhelmingly, and say, "Hey, maybe there's an alternative down the road" — if people want me to do it. If the people don't want it, it's no big deal.□

The governor's campaign contribution — a disappointment

GOV. JAMES THOMPSON says his acceptance of over $8,000 in campaign contributions from corporations whose principal officers are involved in Illinois horse racing is legal and not improper. Thompson's swift and open admission and denial of guilt was not challenged, nor was his contention that the gifts were legal. Yet some were surprised, and others critical of his actions in accepting the campaign contributions since he had built such a solid reputation while federal prosecutor and has appeared open and "straight" during his administration.

The contributions included sums of $1,500 from Burton Street Co., $1,500 from Windgate Farm of Illinois, and $5,250 from Thrall Car Manufacturing Co. Windgate Farm raises horses, and the Thrall company makes railroad cars. James McHugh is an officer on the Windgate and Burton firms, and Richard Duchossois is president of the Thrall company. Both McHugh and Duchossois are also corporate officers in the Illinois Thoroughbred Breeders and Owners Foundation, which is licensed by the state to run horses on Chicago area tracks.

Although it is illegal for an officer of a corporation with a racing license to make campaign contributions, Thompson said the funds in question were legal because they came from corporations, not from individuals. "As I read the law . . . there is no prohibition for a non-licensee [for racing] holding corporation to make a political contribution," said Thompson, adding "under the same circumstances, I would accept the same money again."

Even Thompson's critics agreed that he had abided by the letter of the law, but more than one editorial chided him for setting a bad example and perhaps tarnishing his image in the public eye.□

Yes

By DWIGHT P. FRIEDRICH

A Republican state representative of the 55th district, he has served in both the Senate and House and as a delegate to the 1970 Illinois Constitutional Convention.

Should amendatory power curbed ?

OUR founding fathers, men of great wisdom, designed and organized a government of the people after much prayer and meditation. Their design included three distinct branches of government: the legislative to make the laws, the executive to administer the laws and assume responsibility for government operation, and the judicial to interpret laws and render judgments in specific cases. In Illinois, that separation of powers has been the cornerstone in the perpetuation of our state which also has three distinct branches. That very separation has been usurped by an erroneous interpretation of the 1970 Constitution.

The Committee on Exectuive of the 1970 Illinois Constitutional Convention, of which I was a member, debated for many hours over whether or not to include a provision for an amendatory veto in the new constitution. Prior to that time, the governor was permitted to veto a bill in total, or line item veto portions of bills. He could not change the wording, even if it did not change the intent of the bill. There were many instances when he had no choice but to veto a bill because of a simple technical error. Often the error was typographical or a transposition of words or letters.

Although few states provided the alternative of the amendatory veto to their governors, the Committee on Executive, after extensive hearings and discussion, recommended to the convention that the governor be empowered to make technical changes, eliminating the necessity of a total veto and subsequent reintroduction of a bill.

The committee had some difficulty in arriving at its recommendation. There was considerable reluctance to give the governor any amendatory power. At no time was it ever considered the governor should be empowered to make changes that would alter the meaning of a bill. The sole factor in bringing the committee into argreement on the recommendation was that technical changes could be made by amendment without damage to the intent of the legislation and eliminate the necessity of introducing a new bill.

Both Govs. Daniel Walker and Richard Ogilvie used the amendatory veto to change the will of the legislature on certain bills. The separation of powers was invaded, giving the governor the power to write legislation without benefit of months of deliberation by legislators, testimony from proponents and opponents, and roll call votes by elected representatives of the people from every walk of life and every section of the state. The governor, with the stroke of a pen and his single judgment or that of a staff member, could literally rewrite a bill and return it to the legislature with a "take it or leave it" choice.

Although transcripts of debate in the committee and on the convention floor clearly indicate the intention was to use amendatory veto only for technical errors, the Illinois Supreme Court determined, from one single, incorrect answer given by one delegate to another on the convention floor, that the amendatory veto was not necessarily limited to technical errors alone. Although the court noted that terms like "corrections," "precise corrections," "technical flaws," "simple deletions," and "to clean up language" were used to describe the kinds of "specific recommendations for change contemplated," it appeared to place heavy weight on an erroneous answer given by an Executive Committee member. When Delegate Dawn Clark Netsch (now a state senator) asked, "Then it was the committee's thought that the conditional [amendatory] veto be available only to correct technical errors?" Then Delegate Frank Orlando answered, "No, ma'am," and the court used this single, incorrect answer to authorize the governor to make substantive changes in legislation.

It should be noted that transcripts of the Committee of the Whole hearings on this matter contained other statements clearly illustrating the intent of the convention. Delegate Ronald Smith stated: "We had testimony to the effect that many of the bills that are returned are returned for corrections or for simple deletions — simply to clean up the language. If the legislature can, instead of sending something back into committee, take care of that kind of problem in one day, we feel that would be a substantial progressive move."

The report of the Committee on Executive also leaves no doubt as to the intent. "This proposed section, which has no counterpart in the existing Illinois constitution, offers an alternative to the veto which will be especially helpful when the Governor finds reason to object to portions of a bill whose general merit he recognizes. For exam-

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The Constitution states:

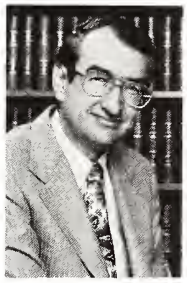
"The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bill shall be presented again to the

No

the veto be

By WILLIAM S. HANLEY

A Springfield attorney, he was legal assistant to former Gov. Richard B. Ogilvie, who was the first governor to use the amendatory veto.



SINCE THE adoption of the 1970 Constitution the debate over the amendatory veto has been quiet on two significant issues. The proponents of the veto neglect to point out that the amendatory veto was but a constitutional adoption of a practice that had existed in Illinois since statehood. Opponents ignore the question of pursuing judicial interpretation that might make the amendatory veto in practice more to their liking.

The history of the amendatory veto was unfortunately not developed for the Illinois Constitutional Convention delegates. Under our first constitution, the veto power was held in a "Council of Revision" consisting of the justices of the Supreme Court and the governor. This council repeatedly sent enacted bills back to the General Assembly with suggested specific amendments which were then offered to the previously enacted bills, adopted, and sent back to the council for final approval. Two-thirds of all vetoed bills were handled this way for 30 years. When the council was abolished with the 1848 Constitution, a new procedure with the same effect was adopted although not used as widely. If the governor received a bill which he did not like but was reluctant to veto, the originating house would pass a resolution requesting the governor to return the bill. The governor would oblige, and the bill would be returned, amended and returned to the governor for final consideration after the other house had approved the change.

Under the 1870 Constitution, a more direct procedure was employed. On at least one occasion, the governor vetoed a bill but stated in his message what was necessary to make the bill acceptable. The originating house amended the bill to comply with the governor's corrections, repassed it, sent it to the other house for approval, and then sent it back to the governor who signed it into law. Although this incident occurred in 1907, the action was not exactly an obscurity since the Illinois Supreme Court gave its subsequent blessing to the constitutionality of the proposal and reviewed the procedure without judicial comment. (*People* v. *Brundage,* 296 Ill. 197, 129 N.E. 500 (1921))

As an informal practice in Illinois, the accommodation that permitted amendatory revisions of vetoed bills between the governor and the legislature apparently fell into disuse for 50 years. So when the delegates to the 1970 Constitutional Convention spoke of it as something "new" to Illinois, everyone assumed it was. However, all that the 1970 Constitution did was to formalize and stimulate an informal practice that had existed since 1818.

Since the new Constitution has taken effect the amendatory veto power has been broadly employed. It has been a "new" constitutional experience to the legislature, and some uses of the power clearly ruffled legislative feathers even though legislators who sponsored bills had specifically requested the governor to apply his amendatory veto power.

The principal approach of opponents has been to seek a constitutional amendment to repeal the amendatory veto or to limit it to "technical changes" (which admits at least a limited value of the power). A constitutional amendment requires approval by the electorate which would not likely approve it or perhaps even understand this issue.

If the members of the General Assembly feel that a governor is abusing the power, they should look first to their own branch or to the courts to correct the abuse. The legislature has shown certain prerogatives it can exercise. First, it has rejected an amendment proposed by the governor and overrode the veto. Second, it has passed an amendment of its own — different from that proposed by the governor. (This practice has not been passed on by the courts.) Third, the legislature has done nothing and let a bill die. The legislature can also ignore a bill with an amendatory veto, let it die, and pass an entirely new substitute bill. If the General Assembly doesn't like these options, it can go into court asking that the bill be declared law notwithstanding the amendatory veto.

The Illinois Supreme Court has had an occasion to speak *in dictum* on the amendatory veto concerning parochial aid legislation passed in 1971. (*People ex rel Klingert* v. *Howlett,* 50 Ill. 2d 242, 278 N.E. 2d 84 (1972)) The Illinois Supreme Court was confronted with Gov. Richard B. Ogilvie's amendatory veto which amended the title of the bill and substituted a reworded proposal for all of the text after the enacting clause, although reiterating verbatum much of the language of the bill as originally passed. The court was obviously trou-

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Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated."

— Illinois Constitution, Article IV, Section 9, paragraph (e)

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Yes:

Eliminate or limit the amendatory veto to protect the balance of powers

ple, he is now with some degree of regularity compelled to veto some measures merely because of a technical flaw in their wording."

The above language clearly indicates the committee intended this power to be used for technical errors only, not for substantive changes. Similarly, the debates of the convention had the same intent, with the one exception which the court cited.

It is ironic that the controversy over the amendatory veto can be traced to one single erroneous answer made by one delegate on the convention floor. As a result, the governor, using the amendatory veto power, can exercise legislative powers delegated to elected representatives of the people, without deliberate consideration in open debate in a public forum, with all sides of the issues presented.

The amendatory veto must either be eliminated or confined to the purpose for which it was intended — that of making simple changes without changing the meaning of a bill. It is clearly the governor's responsibility to administer the laws, not write them. His intrusion into the legislative branch is a step toward total power in one single office — a step we cannot afford.

I have introduced two resolutions for constitutional change in this area. One would eliminate the amendatory veto entirely; the other would prevent the governor from tampering with the meaning or intent of a bill passed by the elected representative of the people. It is time for the legislature and the people to act favorably on one of these resolutions to protect the balance of powers.□

Continued from page 25.

No:

Retain the amendatory veto, but guidelines should be set by legislature — or court — to prevent abuse

bled that the scope of the governor's authority in the new Constitution was not clearly stated nor could it be found in the committee reports or debates. The justices did not attempt to delineate the exact kinds of changes that would fall within the power of the governor, but merely stated that "substitution of complete new bills, as attempted in the present case, is not authorized."

But what is "authorized?" Clearly, something more than technical changes is authorized, but how much more? One answer lies in the tests which the courts have approved as to what the legislature itself may do by way of an amendment to a bill. This is the test of "germaneness." Stated simply, an amendment to a bill is permissable if the amendment promotes the object and the purpose of the act to which it belongs. The Illinois courts have also held for decades that the governor is a participant in the legislative process. I submit that one path for unscrambling the scope of his power in the amendatory veto is to recognize this legislative role of the governor and hold him to the same restraints as the legislature.

Such an analysis is not intended to be cavalier. It recognizes that the courts have in some instances come up with tortured applications of the "germaneness" doctrine, and that the legislature has engaged in practices of near constitutional "magic" in the conference committee process. It also recognizes that under the "germaneness test" the 1971 parochial aid amendatory veto would have been proper. However, if an acceptable answer is to be found where the constitutional record offers no clear guidance, then the "germaneness" doctrine may well be the answer.

In the meantime, it should be recognized that the amendatory veto has served to save much worthwhile legislation.

The trouble with the amendatory veto power is not the power itself, but the abuse of the power. If abused, the instruments of checks and balances are there for correcting its abuse. The abuse can be corrected by the General Assembly or by the courts. As the Supreme Court has demonstrated, it has not hesitated to act where in its opinion the power is abused. What is needed are clear guidelines. Either the legislature has to establish them by its own action in the review of amendatory vetoes or take the question to the courts to decide. The guidelines should not place the governor in any different relationship to legislation than the General Assembly has so that a consistent and uniform policy concerning the manner in which legislation is considered would ultimately be adopted. In this way, constitutional harmony can best be obtained and the debate over the power ended.□

By MARTHA S. COLLINS

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Checking the 'fourth branch' of government

Regulating state regulations

THE 80th General Assembly enacted a significant law amending the Illinois Administrative Procedure Act which affects nearly every state agency. Ironically, this law, P.A. 80-1035, represents an answer to a 20th century problem that was created by a 19th century solution. Theoretically, P.A. 80-1035 (H.B. 14) should help to rescind a huge number of outdated and anachronistic rules while also decreasing the number of current rules generated by state agencies. In the process, it should encourage citizen participation in the development of agency rules and provide for legislative review of agency actions.

In the light of massive state budgets for operations, it may be blasphemous to talk of a fourth branch of government — the administrative bureaucracy. But such talk would at least reflect current realities in state government. In the 1800's the Illinois legislature was beginning to delegate "to administrative bodies or officers the power to do those things which it might properly, but cannot understandably or advantageously, do itself." Since then, administrative bodies and their rules have proliferated beyond these early legislators' imaginations. This has led to a sinking feeling on the part of the legislators that they were no longer much in control of their offspring. The citizens, the theoretical beneficiaries of the work of agencies, were even more helpless in the face of agencies overgrown with rules and regulations.

Take, for example, a hospital and physician in the Joliet area wanting to honor a couple's desire to share the Caesarean birth of their child all the way through the operating room. The physician and the hospital were unable to do so because of a state agency regulation that "no lay visitor shall be given access to the operating room during surgery." William A. DeWitt, M.D., called this a "law established by appointed bureaucrats" rather than the legislators, and suggests that these regulations are even harder to change than "real" laws.

This regulation was issued by one of over 110 agencies (encompassing commissions, boards, departments or individual officers) implementing government policy in Illinois. Although the existence of agencies and the scope of their functions are determined by the legislature, these 110 and more agencies have a remarkable degree of autonomy. They have created their own rules and rule-making process in order to act on the responsibilities they were assigned by legislation.

> Any time an agency wants to adopt, amend or repeal a rule it must follow the new process which includes responding to comments by citizens and to remarks of a legislative joint committee

Collectively, these agencies have managed to generate something like 300 volumes of rules, all filed with the Index Department, Rules Division, in the Secretary of State's Office. The Illinois Commerce Commission, with 25 volumes and the Department of Public Health with 24 volumes, are among the more prolific rule makers. Other agencies, more modest in the scope of their functions, can at least boast of having only one volume of rules. An approximately equal number of rescinded rules are also filed. Legislators have high hopes that the rescinded portion of rules will grow with P.A. 80-1035.

An increase in the number of rescinded rules, or a decrease in the number of current rules, is not all that P.A. 80-1035 was designed to accomplish, although these are the major intents of the law. Rep. Harry "Bus" Yourell (D., Oak Lawn), cosponsor of H.B. 14, aimed the legislation at "the situation of runaway agencies and haphazard rule-making" and at making agencies accountable for every rule that is on their books.

The new procedure

From now on, any time an agency wants to adopt, amend or repeal a rule it must follow the process set forth by P.A. 80-1035 which includes responding to comments by citizens and to remarks of a joint committee of the General Assembly. Briefly then, here is what is involved in the rule-making process:

An agency submits to the Secretary of State's Office a proposed rule, amendment or repeal of a rule to be published in the *Illinois Register.* The following information must be given in a uniform format specified by the Rules Division of the Index Department: the text of the proposed rule, or the old rule with the proposed amendments or the proposed rule to be repealed; the statutory citation that authorizes the rule; a statement of the issues that are involved; and the time, place and manner in which citizens can contribute their comments. Immediately upon publication and for 45 days following, the public may submit comments, although a request to comment must be made within the first 14 days.

The amended act is significant be-

MARTHA S. COLLINS
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cause it requires nearly all state agencies to comply, exempting only the Office of the Governor, the Senate and the House of Representatives, the courts and agencies that do not have statutory rule-making powers, and thus vastly increases the opportunities for the public to participate in rule making. Also important is the new law's provision for a specific legislative review process. And the law requires all agencies to follow a uniform and systematic procedure for publicizing, recording and documenting rule-making decisions. The Office of the Secretary of State continues to be responsible for the recording of rules and has the added task of publishing rule-making actions in the *Illinois Register,* a weekly publication created by P.A. 80-1035. Legislative review is carried out by the Joint Committee on Administrative Rules. Its 16 members are selected from the General Assembly to serve two-year terms. Four members are appointed by the Senate president, four by the minority leader of the Senate, four by the House speaker and four by the minority leader of the House. The Joint Committee, with an initial budget of one quarter million dollars, also has a salaried executive director.

Joint committee review

Upon publication of the information required in the Rules Division format, the joint committee begins its review of the proposed rule. The joint committee makes sure that the rule proposed is within the agency's statutory authorization, that it is in proper form and legally correct and that the public notice period "was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal."

The next step depends on the joint committee's findings during the review. If no objections are raised, the agency files a certified copy of the rule proposed with the Rules Division after the 45-day notice period has ended. The Rules Division sends a certified copy to the joint committee within three days and publishes the final text of the rule in the next issue of the *Illinois Register.* Ten days after the rule is filed it becomes effective.

However, if the joint committee issues an objection, the agency has 90 days after receiving the statement in which to respond. The agency has four response options, each with consequences that are considerably stacked against an agency which wishes to reject or ignore an objection.

Two of the options are of the Catch 22 variety, because either way the agency responds, it ends up without its proposed rule. First, the agency may withdraw the entire rule to meet the joint committee's objections and it must notify the Rules Division so that this action can be published in the *Illinois Register.* Or, the agency may not respond at all, within the 90 days; in which case the joint committee notifies the Rules Division that the proposed rule is withdrawn. That result must also be published.

The Office of the Secretary of State continues to be responsible for the recording of rules and has the added task of publishing rule-making actions in the new *Illinois Register*

The agency may also decide to incorporate modifications to meet the joint committee's objections. In that case the modified rule would be filed and published.

Another option the agency has is to notify the joint committee that it refuses to modify or withdraw the proposed rule. This is the situation that requires keeping "an open mind with the communication link of each issuing agency," as the joint committee's Executive Director Bruce Johnson has explained. If an understanding is reached, then the rule continues on to the filing and publishing process and becomes effective. Otherwise the joint committee may draft legislation for introduction into the General Assembly which could make a change in the statutes.

Agency accountability

That process does not leave much leeway for agencies. One way or another, agencies must account for the rules they make, change or rescind. Rule-making matters exempt from following that exact process are few. They are emergency rules which terminate after 150 days, rules required by federal rules or law and rules resulting from court orders.

P.A. 80-1035 also designates long-range accountability and review responsibilities to the agencies and the joint committee. As of January 1, 1978, a comprehensive and overall review process is underway. Agencies have between January 1 and March 1, 1978 to file certified copies of all their rules currently in effect with the Rules Division. Any rules not filed within that 60-day period are automatically considered void. Within 45 days after receiving certified rules, the Rules Division sends copies of them to the joint committee. Agencies must now also prepare a compilation, with an index, of all its current rules to "be filed in the office of the Secretary of State in Springfield, . . . and in the Cook County Law Library in Chicago, . . . and with the Joint Committee on Administrative Rules." An update must be done at least once every two years. The initial compilation must be completed before September 27, 1979.

Since the indexing is to be done by each individual agency, the collective filing alone does not make this a central codified index, such as the *Federal Codified Index* or California's computerized index. Precise knowledge of which agency issued a rule is still a prerequisite to locating the details of it. But that compilation will provide an invaluable basis for an index in the future, which, incidentally, P.A. 80-1035 does not mandate. As Executive Director Johnson sees it, the priority concern is to update and trim the mass of rules that are now in the books. Once that is accomplished, a central codified index would be a more realistic goal.

Five-year review

The joint committee also is responsible for conducting a continuing study and review of rules and the rule-making process. This requires reporting to the General Assembly by February 1 of each year and holding review sessions at least once every five years. For the latter assignment, rules must be grouped and evaluated in topic categories, such as human resources, environment or public utilities. The purpose for regrouping is to eliminate duplication of rules and to improve coordination between agencies.

The joint committee cannot approve or veto rules. But it does have authority to request the following from any agency: (1) an analysis of the effect of a rule-making action (including the economic impact); (2) an evaluation of the public comments submitted; (3) justification for a rule-making action; and (4) a description of any modifications made since the proposed rule was published. In addition, the joint committee, upon a majority vote, may give the executive director subpoena powers to bring any person to report to the joint committee or to procure any written information.

Far-reaching changes

This is not Illinois' first law directed at regulating administrative rulemaking, but it is the most far-reaching. In 1951, "An Act concerning administrative rules" called for rules to be filed with the Secretary of State and to be made available to the public. The Administrative Procedures Act, first enacted in 1975, had more ambitious intentions. Among its provisions was one for publishing rules with a 30-day public notice period for submitting comments, and the act required agencies to keep compilations of all their rules. However, only 16 agencies and only portions of their statutes had to comply with this act. That crucial limitation was spelled out in section 1001 of the *Illinois Revised Statutes,* 1975, Ch. 127: "This Act applies to every agency as defined herein to the extent that the Act creating or conferring power on such agency adopts by express reference the provisions of this Act."

With the amended Administrative Procedure Act, Illinois has joined the league of 34 states that have adopted laws that regulate administrative rulemaking and provide for various degrees of legislative review. Only 12 of these states have laws that set forth procedures as rigorous and systematic as Illinois, according to Johnson.

Often a particularly significant piece of legislation tends to generate loud controversy. That does not appear to be the case with this law. Johnson's observation is that "agencies are making good faith efforts to comply." He added that complying with the new procedures should not be more work if agencies have been performing their jobs properly. Well-run agencies most likely have well-designed systems for making and publicizing rules. However, not all agencies have equally complex or simple functions. And the effect that P.A. 80-1035 has on an agency does not necessarily identify how well it is managed.

To the Department on Aging, the new law's requirements will mean a "terrific and permanent work load addition," said one staff member. Why? Because of the bureaucratization of the format that must now be followed, said Joe Goleash, Jr., legal counsel for the Department on Aging. Goleash questioned whether this law represents the most effective way to make information on rules available to the public. He added that the Department on Aging derives a fair number of its rules from interpretation of federal guidelines. Federal guidelines are known to be voluminous and the task of publishing any of them in the *Illinois Register* could be a cumbersome burden. To Goleash bureaucratization of the rule-making process can go two ways: it can "compel agencies to do housecleaning" and to trim the volume of rules, or tempt agencies to change their definition of what is a rule to avoid the extra work. On the other hand, the Department of Corrections, according to Robert G. Hedges, legislative liaison and hearing officer, is able to utilize its existing staff. Hedges pointed out that the Class X crime law has already necessitated a review and updating of the department's rules, giving that department a headstart on meeting some of the new requirements.

> The big unknown is the impact of the joint committee of the General Assembly. It could turn out to be a 'viable committee' or a 'bureaucratic mountain'

The big unknown

Hedges suggested that the big unknown is the joint committee's impact. It could turn out to be a "viable committee" or a "bureaucratic mountain." A staff member of the Illinois Office of Education expressed a similarly cautious sentiment towards the joint committee which, he said, could delay rule-making action.

On the other hand, Ann Lousin, director of the Civil Service Commission, and associate professor at John Marshall Law School, Chicago, had been advocating this kind of law for the last four years. She is particularly pleased about the creation of the *Illinois Register* and anticipates that the uniform procedure and the legislative review process will do much towards improving coordination among agencies.

Implementation

With the exception of Goleash from the Department on Aging, none of the agency staff interviewed thought that P.A. 80-1035 would lead to a reduction in the number of rules that will remain current or that will be issued from now on. However, by March 1, an informal count showed that only about 90 per cent of all the rules originally on file had been certified to be retained, said T.C. Christian, Jr., manager of the Rules Division. One agency, the Illinois Commission on Human Relations, simply mailed a letter stating that all their rules were obsolete and would not be recertified. Only six agencies appear to have failed to meet the deadline, according to Christian. He added that these outstanding agencies — related to higher education — are taking the position that P.A. 80-1035 does not apply to their situation.

The law has just begun to be fully implemented and the dead wood conjectures have yet to be proven. Despite the comprehensively constructed law, there are bound to be problems that could not be anticipated and situations that will require legal interpretation. One positive result seems certain, however: P.A. 80-1035 will make it difficult for agencies, citizens and legislators to stray too far apart.

For citizens who want to keep track of the rule-making events by agencies, copies of the *Illinois Register* will be on the shelves of the Cook County Library in Chicago, the State Library in Springfield, the 40 state depository libraries throughout Illinois and other libraries which request the weekly publication from the Rules Division. Individuals, through the Rules Division, may also subscribe to the *Illinois Register* at a cost of $52.00 a year.□

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By AL MANNING

The administration is a-changin'

Is a state job secure?

Even in patronage oriented Illinois, indications are that political firing is on its way out. With 40,000 of the state's employees under union contract, the Supreme Court's anti-patronage decision and Gov.-elect Thompson's pledge not to fire rank-and-file Democrats, nonpolicymaking jobs should be safer than in the past. But, political hiring is still in, and reorganization might offer an excuse for layoffs

AL MANNING
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THE TURNOVER in state jobs that usually follows a change of administration will probably be much smaller this year than in the past. Consider these factors:

1. Ten times as many state employees (40,000 compared to 4,000) have been organized and are under collective bargaining agreements since 1973. Employees can look to unions for support against political firings.

2. The courts have turned against patronage firings, at least as applied to the rank and file. As recently as last June, the United States Supreme Court, although dividcd 5-3, found that patronage dismissals restricted freedom of political belief and association.

3. Gov.-elect James R. Thompson, during his campaign, pledged not to fire nonpolicymaking employees for political reasons. He cited the Supreme Court opinion as a reason.

4. The two-year term of office of this administration may make it more difficult to recruit qualified party members for political jobs, if this involves leaving a job where they feel secure.

But some important qualifications attach to the above:

1. Policymaking positions are exempt from tenure protection provisions of the Personnel Code. Neither do the courts see any reason to safeguard the jobs of those who make policy.

2. If there is any extensive reorganization of state government (as candidate Thompson indicated there could be), this might be the way to abolish many jobs and later create new ones.

3. The fact that many people are out of work increases the pressure on the politicians to find jobs in state agencies for unemployed constituents.

When Gov. Dan Walker issued Executive Order No. 6 on collective bargaining September 4, 1973, he argued: "This will go a long way in keeping patronage out of state government. Equally important, it will encourage qualified people to join state government and make the serving of this state's citizens a professional career."

Role of employee unions

The Illinois General Assembly did not approve collective bargaining for state employees. However, when appropriations were approved for the agencies which had negotiated contracts with employees, state Rep. Donald Totten (R., Schaumburg) said: "What we've done, without a doubt, has honored the collective bargaining agreement."

Nolan Jones, Walker's director of the Department of Personnel, said approximately 40,000 of the state's 65,000 employees are under collective bargaining contracts. Prior to the executive order, Jones said approximately 4,000 employees had "memorandums of agreement," a form of collective bargaining. They now have formal contracts, he said.

The unions representing state employees are the American Federation of State, County & Municipal Employees; the Teamsters; the Meat Cutters; the Federation of Teachers; the Machinists, and the Nurses Association. The Illinois State Employees Association, which served as the traditional spokesman for employees for years, does not hold collective bargaining rights for any group of employees. The unions which do represent employees cross all agency lines, and they are statewide unions.

William Hanley, a former assistant to Gov. Richard Ogilvie who is now engaged in the private practice of law in Springfield, described the effect of collective bargaining on the patronage system.

"The influx of collective bargaining has made a lot more jobs secure,"

Sometimes a job is simply abolished, or an employee will be told he or she has to take a sizable cut in pay. There is also the geographical transfer to an undesired part of the state

Hanley said. "A union now has the financial resources available to protect an employee who has been fired for political reasons. What can an employee do who gets fired or laid off? In the past, whether he has been a patronage employee or not, he has usually taken the political channel and gone through his state representative or his county chairman. The unions now supplement that. The unions are substituting for political organizations. Employees can run to labor organizations now if they want to."

Role of the courts

The courts, in recent years, have tended to side with employees on the question of political firings. The patronage system was dealt a blow by a series of cases involving a suit by Michael L. Shakman of the Independent Voters of Illinois against Democratic and Republican officials.* In 1972, the federal district court in Chicago held that governmental employees could not be coerced into making political contributions or doing political work, but permitted political firings as long as these were not based on refusal to contribute or work. It was not until June 1976 that the U.S. Supreme Court went beyond this and forbade political firings. Then, in a case which originated in the Cook County Sheriff's Office, *Elrod and others* v. *Burns and others,* Justice William Brennan, Jr., said, "The practice of patronage dismissals clearly infringes First Amendment [free speech and free association] interests."

The court agreed with the Cook County officials that there is a need to ensure that the will of the electorate is carried out by public servants in sympathy with the policies of elected officials. But it said these interests can be protected by replacing persons in policymaking positions and not rank-and-file workers. In a dissent, Chief Justice Warren Burger said patronage issues are "political questions properly left to state legislatures rather than to the courts." (See *Illinois Issues,* Sept. 1976, pp. 28 and 29.)

Hanley, who has handled numerous lawsuits for employees who claim they were fired for political reasons, explained the ruling this way: "In effect, for the first time, the U.S. Supreme Court ruled — for all different reasons, but it was clear — that political beliefs are First Amendment rights. A termination of employment because of political beliefs is unconstitutional."

Policymaking as a test

Thompson pledged during the campaign that he would not dismiss rank-and-file Democrats hired by Walker. "The Supreme Court ruled an employee cannot be fired for political reasons," he said. "I agree. If anybody who is now a devoted, hardworking employee in a nonpolicymaking position, wants to stay, he can." He even said that a Democratic county chairman who holds a nonpolicymaking position can stay, as long as he performs his job. But he added: "People in policymaking positions must be the governor's people."

How many employees in each department make policy? This may depend on the new governor's definition of policymaking. In the Department of Personnel, Director Jones considers six or seven positions as policymaking out of a total of more than 500 employees.

The Personnel Code provides also for the exemption of positions which "involve either principal administrative responsibility for the determination of policy or principal administrative responsibility for the way in which policies are carried out." The Civil Service Commission must approve such exemptions; the commission listed 149 such exempt positions in November.

Effect of two-year terms

Job changes this time could also be affected by a unique situation in Illinois government. The governor — and the other state elected officials — are serving two-year terms which expire in January 1979. The two-year term was established by the state Constitution for this election so future candidates for state office will not be elected at a time when the president is elected.

Thompson said while campaigning that he did not think the length of his term would have much of an effect on employees except that it could make recruitment of middle-management executives more difficult. Some persons might be reluctant to leave private industry in order to join government with a job guarantee of only two years. Most department directors are appointed by law to two-year terms, but they are routinely confirmed by the state Senate for a second term in order to complete the governor's term.

Right after his election Thompson singled out two departments — Public Aid and Children and Family Services — where he would most like to have his own director. But as a practical matter, several of the directors appointed by Walker left government prior to the election or made plans to do so. Allyn Sielaff, Corrections, took a similar position in Wisconsin; Robert Allphin, Revenue, assumed a Revenue job in Pennsylvania; Tony Dean, Conservation, joined an investment firm in Chicago; and Robert Wilcox, Insurance, accepted an offer in the insurance industry.

Reshuffling agencies, jobs?

A major emphasis by candidate Thompson was his desire to reorganize state government. Some observers think that when the county chairmen and legislators start pressuring Thompson to fire Democrats, the reorganization plan would offer a valid excuse for layoffs. Thompson responds by saying: "Reorganization will not be used as a subterfuge to avoid the impact of the Supreme Court ruling."

But if the new governor turns out to be more patronage-minded than he appears, it would not surprise those

*Shakman v. Democratic Organization of Cook County, 310 Fed. Supp. 1398 (1969), 435 F. 2d 267 (1970), and 356 Fed. Supp. 1241 (1972).

familiar with Illinois' long history of being one of the most patronage oriented states in the nation. Gov. Walker and his staff used to contend that traditional patronage did not exist in their administration. Walker's critics disagreed, arguing that the only difference was that Walker did not fill positions through regular party channels because he was at odds with many of the party regulars. Instead, they say, he hired many rank-and-file workers who were known to be personally loyal to him by first placing them under contractual services and having them take and pass a civil service test later.

A major blow to the patronage system came when Gov. Adlai Stevenson (1949-52) obtained legislation placing the State Police under a merit system. Gov. William Stratton (1953-60) persuaded the legislature to enact the present Personnel Code. Upon the completion of his term, Gov. Richard Ogilvie (1969-72) placed maintenance employees of the Department of Transportation under the Personnel Code, and the action was later upheld by the Illinois Supreme Court.

The secretary of state's office has been a traditional haven for patronage jobs, but that is changing too. A number of lawsuits were filed as the result of Republican John Lewis' massive dismissals following Democrat Paul Powell's death. As a result, Director Jones said most of the employees of the office will be under the Personnel Code before Democrat Alan Dixon is sworn in as the new secretary of state.

With the changes in the state executive officers, it seems likely that there will be some personnel changes. Besides the governorship and lieutenant governorship going from Democrat to Republican, the comptroller's office has switched from Republican to Democrat.

Fighting the system

It is not a simple matter for employees to fight what they consider a dismissal for political reasons. Nor is it easy for an employee to prove that a discharge was because of party affiliation.

Sometimes a job is simply abolished and the duties spread among a number of other employees. At other times an employee will be told he or she has to take a substantial pay cut because the job's responsibilities do not match the salary. Or there is the geographical transfer to an undesired part of the state — or simply taking away the person's office, telephone and desk.

"Part of the problem is the disparity of resources," Hanley said. "A laid-off employee must first find a lawyer willing to take his case. In some cases, these fights last three years or longer. If the employee wins, all he gets is back pay — minus any unemployment compensation or salary he might have earned from other sources. And all the while he loses important fringe benefits such as health insurance, life insurance and retirement benefits. For an individual to fight city hall, it is a real burden. On the other hand, the government in any given case has unlimited resources. The government can appeal and appeal."

If an employee thinks he or she has been dismissed for political reasons, the employee can of course appeal to his or her immediate supervisor. The employee can also appeal to the director of the department, and then request a hearing before the director of the Department of Personnel. If the employee is certified under the merit jurisdiction of the Personnel Code, he or she may appeal to the state Civil Service Commission. In cases that appear to involve discrimination because of race, color, religion, sex, national origin, ancestry or physical or mental handicap, the individual may ask the Fair Employment Practices Commission to investigate. If such attempts fail, the employee can hire an attorney and file a lawsuit in an attempt to win back the job.

Looking for a job

But what about those on the outside who are hopeful of finding a job with the state now that a new administration is coming in? According to Hanley, most of the court activity has focused on political firings with scant attention paid to political hirings.

"It's still who you know and not what you know," Hanley said. "The ticket of entry is still politics. Don't call it civil service. When you get a list of three from civil service, you can still hire a Republican or a Democrat. There is no protection against a patronage hiring. This is denial of equal protection under the law and discriminates against the public at large."

Hanley, it would seem, would like to break the legal silence which now exists on the entry of employment into government jobs.□

Political appointees can fill these posts

POSITIONS involving "principal administrative responsibility" for making or carrying out policy are exempt from the merit jurisdiction of the Personnel Code and so available for appointments by an incoming administration. The Civil Service Commission listed 149 positions by agency in that category as of November 1. Federally funded positions usually are not eligible for such exemption.

Exempt policymaking positions

Departments	Number	
Aging	2	(2)*
Agriculture	3	
Business and Economic Development	2	
Children and Family Services	6	
Conservation	7	
Corrections	13	(2)*
Finance	4	
Financial Institutions	6	
General Services	4	
Insurance	2	
Labor	7	
Law Enforcement	7	(3)*
Local Government Affairs	6	
Mental Health	25	(2)*
Military and Naval	1	
Mines and Minerals	1	
Personnel	11	
Public Health	4	
Registration and Education	3	
Revenue	3	
Transportation	2	
Boards and commissions		
Investment	2	
Commerce Commission	2	
Delinquency Prevention	1	
Human Relations	1	
Dangerous Drugs	1	
Environmental Protection Agency	3	
Fire Protection, Personnel Standards	1	
Governor's Office of Manpower and Human Development	1	
Historical Library	1	
Law Enforcement Commission	9	(4)*
Liquor Control	4	(1)*
Local Government Law Enforcement Officers Training Board	1	
Racing Board	1	
State Employees' Retirement System	1	
Division of Vocational Rehabilitation	1	
Total	**149**	**(14)***

**Figures in parenthesis show number of incumbents in certified or probationary status which means they cannot be fired without civil service action.*

Source: Civil Service Commission

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By GARY ADKINS

PRISONS

What's going on behind the walls?

WHAT are prisons for? Are they places where wrongdoers are corrected and rehabilitated, or are they designed only to "pen" and punish criminals? The consensus among corrections personnel seems to be that Illinois prisons are primarily functioning for the purpose of confinement: "I don't think any rational person can indicate that anything but punishment is the main reason for prisons," Illinois Department of Corrections Director Charles J. Rowe says. But he adds, "It's not the sole reason. We're trying to return offenders to society as constructive citizens."

Such reform is mandated by the state Constitution, which says in Article I, Section 11, "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." But what kind of job are they doing?

Secondly, who are prisons for? Before they existed, criminals were fined if they were too rich to be whipped, and whipped if they were too poor to be fined. Is economic status now a barrier to equal justice?

Since prisons are so largely ignored, they develop huge, grotesque excesses from time to time. The press, or other reformers, find out and tell us about the filth or overt cruelty going on and we click our tongues (it's just what we had always suspected).

Incremental reforms are forever forthcoming; some actually improve conditions behind bars, most only complicate matters for awhile. It is probably not demonstrable that generations of penal reform have brought any absolute progress toward relieving human suffering in average American prisons.

Overcrowding in prisons

Illinois is no special case. Our state prisons are desperately overcrowded, with 10,450 convicts packed into facilities that should hold no more than 7,500, by federal government standards. But, nationwide, 40 states are experiencing similar critical prison overcrowding, according to *Corrections Magazine* (March 1977).

Conditions in Illinois prisons are not very good. A study prepared for the Illinois Department of Corrections last May recommended that the four largest prisons in the state should be abandoned, since they are dilapidated and dangerous to inmates and staff. It also called the Menard Branch of the Illinois State Penitentiary "one of the worst prisons in the United States." That report, issued by the National Clearinghouse for Criminal Justice Planning and Architecture, was almost immediately suppressed, disputed and repudiated by the state corrections department. Director Charles J. Rowe said, "The report lost touch with reality in terms of what this state can afford. Philosophically I'm not in disagreement with the plan, but I'm afraid there were too many very bright young people, just out of college, writing this thing and the results were not very practical." Rowe claims that

enacting the plan put forward by the Clearinghouse would result in only 6,000 beds for prisoners in Illinois at a cost of $850 million.

Building new prisons

Illinois has built only one new prison in the last 40 years and operates three facilities that are at least 100 years old (Joliet was built in 1860, Pontiac in 1871 and Menard in 1878). Yet the state legislature approved, in last year's November special session, the construction of two new medium-security prisons in the next two years, at a cost of $58 million.

The two new pens will both be located downstate, at Hillsboro and Centralia, despite calls from prison reform groups like the John Howard Association and the American Civil Liberties Union asking that at least one new prison be built in the Chicago area. Since Chicago is the place where most of the prisoners in Illinois come from, there was pressure to build a prison nearby so that relatives could more easily visit inmates, and so that the guards and staff of the prison would have more in common with the prisoners.

But the selection process, aimed at finding acceptable sites as quickly as possible, dismissed upstate locations. The Thompson administration called for counties and communities to submit survey forms if they were interested in having a prison located nearby. No Chicago-area communities applied. There were 20-odd applicants. All those north of Springfield were rejected after public hearings held in the 17 places that seemed to qualify as sites. In some cases the promoters of the sites simply changed their minds. In other cases the

"There are people in our society who should be discarded."

— Spiro T. Agnew

By GARY ADKINS

Inside Menard State Prison: How will Class X effect prison life?

MENARD State Prison is a place where people are discarded. It is well-designed for the purpose. Located in a remote corner of southwest Illinois, it lies like a fat gray rat at the bottom of a hill overlooking the Mississippi River.

Menard is 100 years old and was built at a time when the idea of fortress prisons was becoming popular. It is a maximum security prison and, like others around the nation, is desperately overcrowded.

Last year Menard was called "one of the worst prisons in the United States." Yet it costs more money to send a prisoner to Menard for one year than to send a student to the University of Illinois. The average low-income family in Chicago makes less than it costs to keep a prisoner here for a year. Fortunately the state pays for it. Otherwise who would go?

We recently went to Menard to talk with prisoners and administrators about the new Class X felony policy which went into effect February 1 (P.A. 80-1099). The first man interviewed was Assistant Warden Ken McGuiness.

"Prisoners have several reactions [to Class X]," McGuiness said. "They welcome the determinative aspect of it [in sentencing]. But they would prefer no parole board; they don't like the option [of choosing a new, fixed release date or sticking with their present sentence, with hopes of parole]. But they see it as a definite crackdown, with stronger, lengthier sentences." McGuiness said that the concept of day-for-day good time is already an accepted practice. He said Class X would not have much effect upon the way prisoners are treated. "A guy in here presently will go to the parole board and be given an option of taking a determinate sentence release date [or sticking with the present sentence]." What they choose will depend on which method they think will get them out the soonest, McGuiness said. "Most of these guys already have that figured out, down to the day," he added.

Critics of Class X say that it will worsen the problem of overcrowding in Illinois prisons. When asked if Menard is overcrowded now, McGuiness first smiled broadly, then leaned back in his chair and laughed loud and heartily to himself. "I've got a desk drawer full of lawsuits saying we're overcrowded," he said. "And you ask if we're overcrowded? It's a stupid question."

But McGuiness refused to speculate on the effects of Class X. He did say, however, that since a study was released last year condemning Menard for poor sanitary conditions, lack of adequate medical care and insufficient space, conditions have improved tremendously. "Since then we have opened an annex; we obtained the Chester mental health center, and with substantial capital development renovation we've opened a 400-bed living unit there." He said a new multi-purpose building with recreational facilities was being built, the prison medical unit had been rennovated, and the cell house had been divided into two units. "We've improved the sanitation and plumbing, and we can't do much else but expand," McGuiness said.

What do prisoners think of Class X? We talked to four members of "Lifers Incorporated" to find out. "Lifers Incorporated," they explained, is an organization for prisoners serving at least a 20-year minimum sentence. Its goal is to improve the image of prisoners, as well as the quality of life behind bars. The prisoners interviewed all appeared proud of the accomplishments of their organization. They said it had been largely responsible for getting recreational facilities built, a snack bar opened, stereo in the dining room and air-conditioning installed in the visitors area at Menard.

The four prisoners interviewed were: Jack Stevens, Charles Williams, James Hyde and Robert Stock. "We don't know the true story of it [Class X]," said

public reaction was so strong against building a prison in the area that it seemed hopeless to press on. Opponents of a proposed prison site in East St. Louis included many inmates at Menard Correctional Center from the East St. Louis area. "I would detest a flock of hardened criminals around my family or even closer to them," said one inmate in a letter to a local newspaper. "I cannot believe that my fellow citizens would consign the future of their children to such a fate," said another. But the sites have now been chosen and new prisons will be built and filled: two 750-bed prisons.

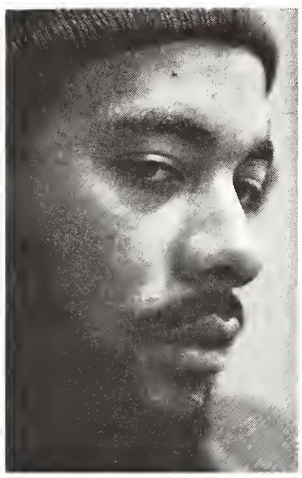
The new prisons will probably be filled to overcrowding as soon as they are completed. It is a rule of prisons that no space is ever left vacant. Illinois already has enough prisoners to assure that the rule won't be broken soon. Yet the state may generate more prisoners, and keep them behind bars longer, under the new "Class X" sentencing law (P.A. 80-1099) — which took effect February 1.

According to Jeanette Musengo, associate director of the Illinois Prisons and Jails Project (a privately-funded reform group), "Initially Class X won't have any effect. We'll have to wait and see how judges use it, especially the discretionary powers — they'll have to double the maximum sentence for heinous crimes and repeat offenders." Some prisoners, of course, will be released early if they opt for a fixed sentence and get day-for-day good time.

Growing problems

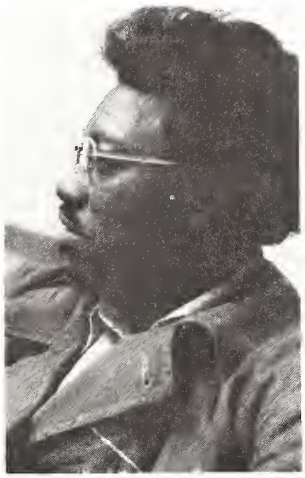
But regardless of the effect of Class X, the prison population in Illinois is

Photos by Jerry Mennenga

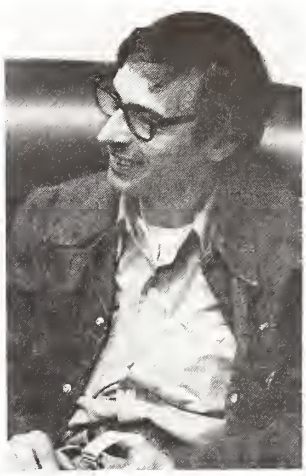


Charles Williams

Jack Stevens



James A. Hyde



Robert Stock

Stevens. Stock agreed, saying he didn't think the press had done a very good job of reporting about it. "It's damned important," Stock said. "It will affect us by atmosphere. It will create a policy of longer sentences that will hurt the lifer's chances of ever getting out."

What about those serving short terms? "The average short-termer likes it," said Jack Stevens. "It will let some of them get out early. My cell mate, for instance, has been driving me crazy telling me how he's gonna get out in a couple of months."

"It will help the burglars the most," added Stock. "It's also going to help the Prison Review Board," he said with a laugh. "Its members all get a $5,000 a year raise."

What about overcrowding? Present conditions are "terrible," according to Stevens. "There should be one man to a cell. The prison is set up for one." There are two and three men in most cells at Menard.

Charles Williams agreed the crowding is "pretty bad" and that Class X will most likely make it worse. "It's already hard on morale," he said.

As for Class X's day-for-day good time provision, Williams' immediate reaction cannot be politely quoted. "We get more than that now," he said. "You get about a day-and-a-half for good time now."

James Hyde, who arrived at the Warden's office late, agreed with his fellow inmates about the effect of Class X. "It will be worse," he said, shrugging off jokes about his new haircut, which had apparently delayed his arrival.

What do prisoners think should be done to improve the prisons? "Invest more in the penitentiary," Hyde suggested. "Give guys doing long terms some consideration."

"Revamp the whole criminal justice system," suggested Stevens. "For crimes against property, make people pay back the victim. It's pretty cruel to put a guy away for years for that."

Williams disagreed with the concept of financial restitution as a solution to crime. "Do something about the causes of crime," he said, naming unemployment as an example.

"When are they going to stop talking about professional criminals?" asked Hyde. Stevens agreed, "There aren't many of those. Most lifers are in for crimes of passion," he said. "Professional criminals are the lying, roguish-assed politicians," Hyde added.

"Class X makes people in prison more desperate," concluded Stock. "It won't stop crime, because when people commit crimes they naturally assume they'll get away with it."

Walking down a row of crowded cells later, one could easily believe that none of the occupants had ever expected to end up there. Most were languishing in their bunks watching game shows on small television sets. Others were playing cards or looking at magazines. A few simply sat, staring at the floor or the bars of their small, numbered cages.

At Menard there are 2,600 men in facilities designed for about half that many. It is typical of the kind of place that most Illinois prisoners are kept in. It looks crowded. The prisoners think it is going to get worse.

expected to grow by several thousand by 1980, with up to 17,000 inmates by 1985. Even to relieve present overcrowded conditions and meet federal standards would cost the state "at least a billion dollars," estimates Musengo.

Conditions in Illinois prisons are such that at Stateville, near Joliet, prisoners live three to a cell in an eight-by-five foot cell designed for one prisoner. "You can't guarantee anybody's safety in a place like this," says Warden Ernest E. Morris of Stateville. Reports of extortion, gang rule, homosexual rape, beatings and stabbings are not uncommon in Stateville, or in any other maximum-security prison.

If one is locked up at Joliet, Stateville, Menard or Pontiac, the state is no longer really in charge. The state will only guarantee food and clothing, and the food will not always be good tasting and the clothing may not always be clean. The state apparently cannot guarantee a prisoner a regular shower, decent medical care, working toilets or physical protection. Some prisoners have jobs inside and some outside, some have exercise programs or sports. There are psychiatric specialists, counselors and chaplains. There are prison newspapers, movies, art classes, vocational courses, prison libraries and transactional analysis sessions, but there are no vacations. The deadening boredom and paradoxical threat of violence are constants of life behind bars.

Reducing prison size

In Illinois, prison conditions vary remarkably. First there are the so-called model correctional facilities, like Vienna, which has no walls. It has cottage-like living quarters beside a lake and gives its exemplary inmates a tight schedule of work, study and recreation (including tennis and fishing). On the other extreme there are the four ancient, crumbling maximum-security prisons. These have hundreds of men, who are locked up in tiny cells for as much as 20 hours a day because the prison has nothing for them to do. According to a federal government suit, filed in late 1976 against the state corrections department, some of these places have inadequate ventilation, lighting and heat, and are infested with cockroaches, rats and mice. The same suit charges that black prisoners are assigned to cellblocks on the basis of race and

Prisoner's cell at Menard

Photo by Jerry Mennenga

denied equal access to various prison programs.

These are the prisons that the national clearinghouse recommended be torn down or radically altered. Unfortunately, these are the four prisons that house the most prisoners — more than 80 per cent of the state's 10,450. The clearinghouse report was also critical of all the medium-security prisons in the state, finding the only "satisfactory" prisons were the small ones: Vienna (with 579 prisoners), Sheridan (325), Dwight women's prison (269) and Vandalia (an "honor farm" with 643 inmates).

Unfortunately, these small prisons are also the most expensive ones. The annual cost per inmate at Vienna is $10,346, at Sheridan $12,062, at Dwight $13,317; whereas at Stateville the annual cost per prisoner is only $5,575, and at Menard only $5,094, and so on.

Expanding further

As mentioned, the federal government has brought suit against the state Department of Corrections, charging overcrowding and unsanitary conditions in Illinois prisons. At the time the suit was filed, Ira Schwartz, then executive director of the John Howard Association, a prison reform group (more involved with case-by-case reform than the Prisons and Jails Project), said that Illinois may have the worst state prisons in the United States. Such a change is hard to support in view of the fact that Alabama, for instance, had such bad conditions in its prisons that the federal government — in the person of U.S. District Court Judge Frank M. Johnson — took over the management of the state system there, imposing new standards on treatment and facilities for prisoners.

Yet, Stateville and Menard come nowhere near meeting the standards for safety, cleanliness and roominess imposed by federal judges in Alabama and elsewhere. Thus, prison officials here think it likely that the courts may order a large transfer of prisoners from the four big, bad maximum-security prisons. Others have suggested the likelihood of federal court intervention in the running of the system itself.

The question may then arise as to whether the two new 750-bed prisons will have to hold more people than planned, and whether there will be enough room elsewhere. The corrections department has already begun to solve the second problem. It is converting a developmental center at Lincoln into a 700-bed medium-security prison. Another 350 beds will also be made available from expansions at Sheridan, Dwight and Pontiac. Construction of a medium-security prison at Eddyville in Pope County may also come next year, according to Gov. James R. Thompson, if funds are available.

Deterring crime

Meanwhile crime goes on. It remains to be seen whether Class X will have any effect on the crime rate in Illinois. "If we doubled the number of people in prison," criminologist David Fogel says, "the crime rate might improve a couple of percentage points, but not much more." Fogel explains this by saying that only about one or two people go to prison for every 100 reported crimes, and only one of every three crimes is reported.

Still, there is value in prisons as places of punishment, according to Harvard professor James Q. Wilson. Wilson believes that the higher the probability there is of punishment, the greater will be the reduction in the crime rate. Wilson also says that juvenile offenders

should be imprisoned more often, since they show the highest rate of recidivism to crime.

Others have different views. Reform groups say that alternatives should be found to imprisonment for most offenders — those who are not already "hardened" to a life of crime. They say that probation, work-release and community help programs are more effective than the pen. "I've been a prison warden and I don't know whether rehabilitation is any panacea, but one thing's for sure. You can't have people sitting on their asses from three to five years," says William Nagel, director of the American Foundation's Institute of Corrections. "You're preparing them for nothingness," he says. Michael Mahoney of the John Howard Association believes that up to half of those in prison in Illinois now could be released without menacing society. Probation and community alternatives are favored by his organization, as well as by the President's Crime Commission, the National Advisory Commission on Criminal Justice and Goals, the Advisory Commission on Intergovernmental Relations and the National Council on Crime and Delinquency.

Looking at inmates

Just what kind of person is currently going to prison in Illinois? The typical inmate is a black male, 27 years old. He has been sent away for a 10-year maximum, but he will get out after serving 2.5 years (before Class X). Figures released in a U.S. Justice Department census also show that only 9 per cent of Illinois prisoners have been in the pen for six years or more. Just 25 per cent have been there for over three years.

The same study also showed that 58 per cent of all prisoners in this state are black, while blacks make up only 13 per cent of the total population. Robbery is the most common crime that puts a man or woman in an Illinois prison; robbery accounts for 28 per cent of prisoners' sentences. The second most common crime is burglary, which brings 16 per cent of all sentences in Illinois. Moreover, black prisoners are given longer sentences and serve more time than whites. Asked why this was, state Corrections Director Rowe said, "I honestly don't know what that indicates. The percentage is going down [the last survey showed that only 53 per cent of prisoners were black]. I suppose that it's because a lot of our cases come out of Cook, and many can't afford a top-notch legal defense."

Figures indicate that blacks are more likely to be imprisoned for crimes of violence than whites, who are typically sentenced for property crimes, like burglary. Robbery is the most common crime for which black people are incarcerated.

Armed robbery is one of the Class X crimes for which lawbreakers will be put away an average of nine years (if they keep all their day-for-day good time). This is an increase of 5.2 years from the average number of years that used to be served for Class X-type crimes.

> The prison population in Illinois is expected to grow by several thousand by 1980, with up to 17,000 inmates by 1985

Underlying the problem of unequal sentencing of minorities are economic inequities. Prime among these is joblessness, which traditionally runs three times higher among blacks than among whites, and even higher among young blacks. "Underemployment" — in low-paying jobs — is also a problem.

Another underlying cause of crime is undereducation. Illinois does not have complete figures on such things, but data from other states indicates that the typical inmate is a high school dropout with little more than two years of secondary education.

Improving prison life

A recent report by the Academy for Contemporary Problems asserts that prisons do nothing to reduce crime on the streets. "Society must seek changes outside the criminal justice system if street crime is to be significantly reduced," the report says.

But how can prisons themselves be improved? The solutions all seem to be expensive. Building many new prisons or improving existing ones so that inmates have room to breathe, or increasing the size and quality of treatment programs would cost the state money it apparently does not have. Funding may even be an obstacle to the institution of private conjugal visits or family visits for unmarried prisoners. Such concepts are continually before the Illinois legislature, and money is always an argument against them, as is the fear of being "soft" on criminals. Proponents say conjugal visits would assuage the problem of marriages that dissolve when one spouse is imprisoned for a long period of time. Others ask why sexual privileges are denied prisoners at all, since sex is a recognized human need. But advocates admit that it would cost several thousand dollars at each prison to set up rooms or trailers where any visits could take place.

"If it comes down to a choice between funding prisons or funding schools, I'd have a hard time picking prisons," admits state Corrections Director Rowe.

Inmate Robert Russo offered an alternative last December in a *Menard* (prison) *Time* column. Russo wrote: "A few years back Holland proclaimed to the world (though few listened) that it had dropped by over one-half the number of people confined within its prison system. It seems the judges . . . decided they would give out 'short,' not long, sentences. No one got over four years — not matter what they did — and most walked the streets again within a year. Careful and detailed studies of the consequences to the community revealed that there were no increases in crime; no rise in murder, rape or other heinous crimes; no skyrocketing burglaries, robberies and the like. The underlying secret of Holland's success was providing the prisoners with 'employable skills' and a good transitional program that put them in the natural environment as quickly as possible . . . . Just as a by-product, millions and millions of taxpayer dollars were saved."

Of course, most people would not sympathize with such a 'mollycoddling' approach to crime. "The public," says John Grider, deputy director of the Oklahoma corrections system, "would like you to dig holes in the ground, lower the inmates into the hole on a rope ladder and then pull up the ladder."□

Reprinted from *Illinois Issues*, January 1977

By ED NASH

Retiring justice of Illinois Supreme Court

Walter V. Schaefer

The judiciary has improved, the executive branch is the same, and the legislature 'doesn't do the job it should do,' says Schaefer. With keen intelligence and soft-spoken passion, he reviews his tenure as justice as he has reviewed each case before the bench

WALTER V. SCHAEFER, the "dean" of the Illinois Supreme Court who retired December 6 after more than a quarter-century of service, likes to quote the Latin words over the door at the rear of the courtroom in Springfield — *Audi Alteram Partem.* "Hear the other side" is what they mean. The Supreme Court chambers are so designed that they are dominated by the bench of judges, Schaefer says, "but those words dominate the judges."

They certainly have dominated the Lake Bluff jurist himself who has had experience in all three branches of government — the vast majority of it, however, in the judicial branch. Although he is devoted to impartiality, Schaefer believes that judges must do more than tote up facts. As he wrote in *Listen to Leaders in Law**, "The judge's 'open mind' is not, of course, an empty vessel into which content is poured by lawyers. Rather, it is an active mind, trained in the art of advocacy, that weighs the arguments as they are advanced, but consciously strives to keep judgment suspended until the case is fully heard."

Schaefer also talked about legal trends, the free press/fair trial controversy and how judges themselves ought to be selected. Back in his top-floor offices of the Civic Center in Chicago, Schaefer, his tie loosened, leans back and reflects on his life, more than one-third of it on the state Supreme Court, and the philosophy he has evolved through the years.

Born in Grand Rapids, Mich., he graduated from high school in Chicago and received his college and legal education at the University of Chicago. Admitted to the Illinois Bar in 1928, he was a statutory draftsman for a year with the Illinois Legislative Reference Bureau, the bill drafting arm of the Illinois General Assembly. Then he was in private practice for five years, was a litigation attorney for the Agricultural Adjustment Administration for a year, served with the Reconstruction Finance Corporation for two years and as an assistant Chicago corporation counsel for three years. In 1940 he began a law professorship at Northwestern University. He stayed for 11 years, although he left temporarily to serve for a year as a referee in bankruptcy in U.S. District Court and for two years to chair the Illinois Commission to Study State Government which became known as the Schaefer Commission.

It was March 21, 1951 — more than a quarter-century ago — that the late Gov. Adlai E. Stevenson appointed him to the Supreme Court. A Democrat, Schaefer was elected that June and, when he came up for election again in 1960, he was nominated by both the Republican and Democratic parties and reelected. In 1970, he was retained on the bench. Because of his age, Illinois law required his retirement in December, when he reached age 73.

Schaefer has long been considered by legal scholars as one of the two or three top state Supreme Court justices in the United States. His abilities were recognized shortly before he completed two decades on the high court bench when he received the American Bar Association's highest award, the ABA Medal. Schaefer was only the 34th American lawyer to receive the medal. The award placed him in company with Elihu Root, who received it in 1930, Oliver Wendell Holmes (1931), John Henry Wigmore (1931), Roscoe Pound (1940) and Charles Evans Hughes (1942). The ABA citation described the Lake Bluff jurist as "a lawyers' judge who has given distinguished service to his state and his nation, service worthy of the high standards which our nation expects of its judiciary."

His most important cases

Described variously as soft-spoken, thoroughly knowledgeable, scholarly, probing, human, humane, Schaefer does not seem to take himself nearly so seriously as the award citation does. But in discussing the most significant decisions of his career all of these qualities were apparent, especially his keen intelligence and quiet compassion. Asked which of his cases he considers most important, he smiles and says: "The opinion a judge is working on at that precise moment is always, to him, the most important. By the time it becomes news generally, it's stale to him."

Regarding the way he goes about his job as a jurist, he says that, after years of experience, it is "a seat-of-the-pants

* *Listen to Leaders in Law*, chap. 14, "The Lawyer Becomes a Judge" (Atlanta: Tutper and Love, Inc., 1963).

ED NASH
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feeling" whether an appeals court should hear a case. When it comes to writing an opinion, Schaefer says he usually goes through "a good many drafts . . . I can write better if I work with something on paper in front of me." He says, "Usually the essence of a case boils down to one or two sentences. You should write an opinion that is understandable. I usually try, if I have time enough, to write in words of one syllable. I think it's important, I think it helps."

After he has warmed to the discussion, Schaefer says that one of his very first cases on the state's highest court (*People ex rel. Wallace* v. *Labrenz*, 411 Ill. 618 (1952)) "sticks in my mind." It involved an 8-day-old child, born with an Rh blood factor of parents with religious scruples against blood transfusions. The trial court ordered a transfusion. It was appealed with the argument that it would be an infringement of their religious beliefs. "I refused to stay the order," Schaefer recalls. "The transfusion went forward — and the child lived. It was," he says, "one of the most dramatic opinions — at least, to me."

Another case, *Amann* v. *Faidy*, 415 Ill. 422 (1953), that Schaefer considers significant concerned a baby who was unborn when the mother was physically injured. Subsequently, the baby was born alive, although injured because of the mother's condition. The question was whether a claim against the party responsible for the mother's injury was justified. And, although Illinois law had previously not allowed such claims, Schaefer held that there could be recovery. It was the first such case "and something of a pathbreaker," he says, adding that, in later years, such decisions were extended to apply to a baby who dies in a mother's womb.

A third case that Schaefer decided enabled the court, he says "to clear up a very bad situation in the law of Illinois" that was established in *Herb* v. *Pitcairn,* 392 Ill. 138 (1945). The 1945 case involved an injured railroad man who brought legal action in a city court. He won a verdict which was appealed, reversed, and sent back to the trial court for a new trial. Subsequently, it wound up in circuit court where the railroad moved for dismissal on the ground that the statute of limitations had run out. The case was dismissed and the state and U.S. supreme courts agreed with the dismissal.

"Later," he says, "we had a case [*Roth* v. *Northern Assurance Co.*, 32 Ill. 2d 40 (1964)] involving a similar question. The trial court dismissed it; we reversed that. I wrote the opinion and I was very happy to have the opportunity to point out that, in applying the statute of limitations, you must always be conscious of the purpose of the statute. If it's just applied blindly, you're apt to get very bizarre and unjust results." In effect, Schaefer says, his ruling was that "if a man files suit in the wrong court, that stopped the statute of limitations."

Most cases do not get so far as the Supreme Court, of course. There was a time, Schaefer remembers, when he read every single petition for the high court to consider a case. "I read the Appellate Court opinion and glanced at the

petition and, in 75 per cent of the cases, I could decide right at that point whether the Supreme Court should take it or not." He says, "If it's of major importance to Illinois, we automatically take it. Often, if there's one basic constitutional issue in a case likely to go to the U.S. Supreme Court, I vote to take it. I'd rather have our court pass on anything going to the U.S. Supreme Court."

In the last few years, however, he says, he has had his two law clerks read most of the petitions. "They dictate notes. Sometimes I agree, sometimes I disagree. If there's any doubt, I look at the petition. If I disagree, it's usually that I'm aware of some situation of which they are unaware . . . a festering problem throughout the state. I may know an opinion the court is adopting that will settle it." When it comes to writing an opinion, Schaefer says, "Sometimes I start writing it on the train or plane, while it's fresh in my mind; but that's rare. Usually, I turn cases over to my law clerks. Basically, I like them to feel the responsibility, but, in the end, it has to be mine. Usually, I have a pretty fixed impression in 80 per cent of the cases."

His value to the law

At times, he says, he and his law clerks "argue things thoroughly. We sometimes have sharp discussions." Schaefer recalls one occasion involving Adlai E. Stevenson III, his former law clerk and now U.S. senator who was also son of the man who appointed him to the high court. "People speak of him as pusillanimous, equivocal and unsure of himself," he says, "but I remember very vividly . . . he insisted a particular case should be decided in a certain way. I felt otherwise; he came back, politely and insistently, and — dammit — he persuaded me, and the whole court was persuaded."

Although the essence of a case can generally be incorporated in relatively few words, Schaefer says it must describe what it is about "in deference to the authorities" and to tradition. "I think I tend to write less for the attorneys [today] perhaps than for the attorneys of the future," he muses, emphasizing that a judge has "to be very conscious and careful to write tightly because what he says is going to be used in the future by other judges." He adds: "I think my greatest value to the court and the law has been in visualizing and shaping language so it will not be used inappropriately in future cases — avoiding the use of the inadvertent dictum."

As a past or present practitioner in all three branches of state government, what does Schaefer think of them? "I don't think our legislative body does the job it should do," says the former drafter of proposed laws. "It's not doing as good a job now, with staffs, as it did years ago when legislators performed without them." Conceding that maybe this is a "harsh judgment," he still sees "so much buck-passing and so little responsibility."

"Perhaps, things have become more partisan and they've always been too partisan," says Schaefer. As a supreme court justice, Schaefer says, "You come

Schaefer: 'regulation of insurance companies is one of the weakest spots in state government in Illinois'

to feel a sympathy and affection for the people of Illinois. You hate to see their interests jeopardized for minor political advantages. What appears to legislators to be a major political coup is just utter nonsense so far as citizens are concerned."

As for the executive branch, which was probed by the onetime Schaefer Commission, he does not think the quality has changed very much. He says, "I think some bad spots still exist. My personal appraisal — a personal prejudice — is that the regulation of insurance companies is one of the weakest spots in state government in Illinois." And, he says, public aid and its administration are "extremely difficult. Opportunities for fraud are all over." Only time will tell about the Environmental Protection Agency, he says. "It's extremely important and it's started well." The new constitutional amendatory veto power for the governor is a "tremendous improvement," he says. But drawing the line between such a veto and writing new legislation will have to be decided on a case-by-case basis. "I don't know how you could devise language to eliminate the gray area," says Schaefer, so the governor isn't drafting new legislation — which is not the duty of the executive.

His opinions of judiciary

The judiciary, his own branch of government, has improved, Schaefer believes. "Criminal justice is infinitely better," he says, pointing to the virtual elimination of claims of physical brutality in confession cases "because of the attention paid by the U.S. Supreme Court to due process and constitutional guarantees." Both the Illinois Courts Commission, which decides cases involving judges, and the state's Judicial Inquiry Board, which investigates these cases, are doing a good job, Schaefer says. He thinks the original feeling of "hostility" by judges toward the inquiry board has now dissolved.

What about legal trends during the years the Lake Bluff jurist has been on the bench? "I think, unquestionably, the law has become much more sensitive to the rights of individuals," he says. "This has been dramatic in the field of criminal law and also quite apparent in the field of civil law. Maybe, in some cases, the pendulum has swung too far; the law has a way of doing that.

"The consumer is better taken care of now, in class actions," he says, adding pointedly: "There is a strong feeling that the trend has gone too far and class actions are being abused — the same with medical malpractice cases. There probably is abuse; the pendulum is going to swing back."

On one of the continuing issues of the day, free press and fair trial, Schaefer says: "I don't think there should be a controversy. A fair trial is critically important. There are cases where existence of free press is critical to a fair trial." But, he adds, "I think the press abuses its constitutional privilege. Too often it wants to print the sensational details in such a way it is impossible, or nearly so, to select a fair jury to try the case. You have to have the appearance of a fair trial, not just a fair trial. It's important not only that justice be done, but that justice be seen to be done."

Labeling the method of selection of judges "an extremely difficult question to answer," Schaefer is adamant on one point: "Having to be nominated in a party primary is the worst feature of the system. I'd have them appointed for life. I see no basis for the election of judges," he says, stipulating that he means lifetime appointments for all three levels in Illinois — circuit court, appellate court and Supreme Court. He suggests some sort of "policing mechanism" for judges with lifetime tenure and says that, perhaps, "it might be desirable to go into the quality of their work. It might be, it might not."

Asked about the jury system, Schaefer points to a lecture* he gave earlier in 1976 in which he said: "The jury is an accustomed form, but the time is ripe to consider whether that form, valuable as it may be in criminal cases, has not outlived its usefulness in the world in which we live today." With or without juries, as Schaefer writes in *Listen to Leaders in Law*, a judge is ever beset with "an unceasing, inexorable demand for decision . . . [and] responsibility for an ultimate decision forces . . . an instinct for objectivity."

And there is always work for a judge. Paraphrasing a line from deToqueville's *Democracy in America*, Schaefer says, in the United States "almost every question sooner or later becomes a legal question." Further, most nonlawyers may not realize, as the retiring jurist puts it, that "the backbone of legal education in this country is not a study of the laws enacted by legislative bodies, it is rather a study of the opinions of the courts and the common-law practice."

Perhaps the final sentence Schaefer wrote in *Listen to Leaders*, although he most certainly did not intend it that way, applies very much to the veteran jurist himself. Discussing great judges, he writes that "their inner satisfaction, which they do not articulate even to themselves, comes from devotion of their best efforts of mind and heart to the service of the ideal, unattainable perhaps, but still inspiring, of universal justice for all men."□

*National Conference on the Causes of Dissatisfaction with the Administration of Justice, "Is the Adversary System Working in Optimal Fashion?" (The Pound Conference, St. Paul, Minn., April 7-9, 1976).

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By GARY DELSOHN

Hammering out a new Illinois law

Capital punishment

'Few issues stir public passions and individual soul-searching as much as capital punishment.' In their rush to revive the death penalty, Illinois lawmakers are reacting to public opinion and facing limitations from the courts and a vocal opposition

GARY DELSOHN
A graduate student in the Public Affairs Reporting Program at Sangamon State University, Delsohn edited a weekly newspaper in Colorado, the *Del Norte Prospector*, after graduating from Southern Illinois University with a bachelor's degree in journalism.

THE LAST state execution in Illinois took place August 24, 1962 when cop killer James Duke was electrocuted in the basement of the Cook County Jail. The deep and abiding doubts about the morality of capital punishment can be seen in the recent statement of Warden Jack Johnson, the man who pulled the switch in Duke's electrocution. Johnson said "I had a definite feeling it was wrong. There was a feeling of guilt. But I rationalized it. I said, 'Okay, society, this is what you wanted and I gave it to you. It must be right.'"

Illinois Administrative Director of Courts Roy O. Gulley, a man who says he has "no real strong feelings about capital punishment either way," witnessed an execution when, as a young man fresh out of law school in 1951 he was chosen by the late Gov. Adlai E. Stevenson to be one of the six state witnesses required by law. "I stood there in complete terror, with my eyes closed," Gulley said. "I went away thinking it was unbelievably cruel." Opponents of capital punishment claim those in favor of it would feel differently if forced to witness the grisly spectacle of a human being convulsing in an electric chair as waves of electricity pulsed through the body, burning the life away. Rep. Anne Willer (D., LaGrange), realizing this reluctance to witness execution, offered an amendment to a proposed death penalty bill (House Bill 3204) which nearly passed during the closing moments of the veto session of the 79th General Assembly. Willer's amendment would have required state witnesses to executions to be drawn by lottery from the legislature. The amendment failed miserably.

Few issues stir public passions and individual soul-searching as much as capital punishment. Legislative debate and public hearings sometimes become forums for scriptural exhortations, libertarian denunciations, legal analyses and a variety of emotional outbursts. There is no doubt, however, that the public, like its lawmakers, is firmly in favor of the death penalty as the best way to deal with murderers. Yet, vocal opponents claim murder by the state is no less perverse or senseless than murder by individuals. With last summer's U.S. Supreme Court ruling *(Gregg* v. *Georgia)* upholding capital punishment within certain strict guidelines, Illinois, like the rest of the states, is rushing to revive the death penalty. The sensationally publicized case of Utah killer Gary Gilmore, illustrating that state's reluctance to carry out the ruling it imposed, brought the issue to the forefront of public attention. Yet, there are profound and persistent questions in the capital punishment debate that have gone unanswered for centuries as civilized societies have sought ways to protect themselves and punish criminals. Against this backdrop, it is only a matter of time before an Illinois governor signs the death penalty into law.

"The clamor is there," cried Rep. Roscoe Cunningham, (R., Lawrenceville), "for us to pass capital punishment. Public opinion is behind us on this. We are in a strong box." Cunningham's remarks, made during a hearing of the House Judiciary II Committee last session, underscore lawmakers' intentions to bring the death penalty back to Illinois. Our state's last capital punishment law was ruled unconstitutional by the Illinois Supreme Court in November 1975 in *People* v. *Cunningham* on the grounds that creation of a three-judge review panel called for in the law was an improper usurpation of the powers of the judicial branch of state government. By creating the "court," the legislature overstepped its authority, the Supreme Court ruled.

Although even the staunchest proponents admit they cannot empirically prove that capital punishment is a deterrent to murder, or that it accomplishes anything more than quenching society's thirst for revenge, Illinois lawmakers, with the support of their constituencies, are determined to pass a capital punishment measure. House Judiciary Chairman Harold Katz, (D., Glencoe), is fighting a losing battle when he says, "The clamor is not enough. If we react to clamor so will the judges." Although one might imagine the death penalty to be one issue where politics would defer to considerations of justice, deterrence, and morality, the fact that "the people of Illinois have spoken" is paramount, claims death bill sponsor Roman J. Kosinski (D., Chicago). In fact, Kosinski and others realize there is quite a bit of political stock to be gained in sponsoring and supporting death penalty legislation. "We got 67 co-sponsors on this thing without even trying," he said.

'There will be few executions; we all know that. But somebody's going to have to pay for murder with his life to set an example'

Kosinski was the primary sponsor and force behind a measure calling for restoration of capital punishment that passed the House during the veto session last fall. The bill passed by an overwhelming 122-45 vote in the House but stalled in the Senate when its Rules Committee refused to consider the bill on an emergency basis. For the 80th General Assembly, Kosinski has filed House Bill 10,* almost identical to his last effort. His primary co-sponsor on the failed bill was George E. Sangmeister (D., Mokena), now senator, who said he will introduce a companion bill in the Senate. Kosinski said, "We will be going at this thing from both sides next time. It will be my number one priority." Hardly anyone thinks such a measure will fail to be passed and signed by Gov. James Thompson this session.

Illinois' 'defendant oriented bill'

Kosinski's bills were modeled after the statute upheld July 2, 1976, in the U.S. Supreme Court's *Gregg* v. *Georgia* ruling. The statute calls for a mandatory death sentence for certain categories of murder, provided none of a list of mitigating circumstances are determined to have been present at the time of the offense. Because, as Kosinski has said, "Ours is a defendant-oriented bill," defendants can bypass traditional rules of evidence and introduce any information pertinent to consideration of the death sentence. H.B. 10 calls for death for murdering a policeman, fireman, judge or state's attorney who was on duty, personnel of the Department of Corrections, or persons inside correctional facilities with the knowledge of officials — this presumably would include visitors and hostages in prisoner uprisings. Also included are murders committed in the act of arson, rape, burglary, indecent liberties with a child and hijackings. Persons convicted of multiple murders would also be subject to execution, as would persons who murdered on "contract" and persons convicted of murder taking place in public places and endangering the lives of others.

To satisfy the U.S. Supreme Court's ruling in *Gregg* v. *Georgia,* the presence of one or more mitigating factors would preclude the death penalty. In its famous *Furman* v. *Georgia* decision of 1972, the Supreme Court invalidated all existing capital punishment statutes on grounds they were indiscriminate and failed to consider mitigating circumstances. Under Kosinski's bill it would be the defendant's responsibility to claim such circumstances and the burden of proof would be on the state to show, "beyond a reasonable doubt," that no such factors existed. The same standard of proof would apply to the state's responsibility to show the presence of one or more of the aggravating circumstances, that is, one or more of the types of murders listed above.

A defendant convicted of murder but spared, due to mitigating circumstances, would be sentenced to an indeterminate term of not less than 14 years in a state prison. The mitigating factors in Kosinski's bill that would void the death penalty are: (1) a defendant found to have no prior criminal background or record; (2) a defendant under age 18 at the time of the offense; (3) a defendant "under extreme mental or emotional disturbance," although not such as to constitute a defense to prosecution; (4) a defendant whose victim was a participant in the criminal act; (5) a defendant acting under threat of death or great bodily harm; and (6) a defendant not present at the commission of the murder, except in contract murders. Discussing the third situation of emotional disturbance, Sangmeister admitted in committee that "I don't like this, it will lead to all kinds of horrendous trials with psychiatrists, but we kept it in as a result of testimony we received in our subcommittee hearings."

A six-year moratorium on executions?

Any death penalty bill, in addition to the expected questions involving purpose and morality, falls prey to criticism for the seemingly arbitrary selection of aggravating and mitigating circumstances it includes, and opponents usually hammer away at these decisions in public hearings. Opponents of capital punishment say: "What makes the life of a policeman or fireman worth any more than the life of another individual? If we are asking for execution for murdering state's attorneys and judges, then what about the witnesses? They need protection at least as much." Rep. Robert E. Mann (D., Chicago) alluding to these questions, asked, "What is the rush to put the state back in the business of killing?" He suggested a six-year moratorium on executions until such time that these problems can be worked out. Proponents answer by pointing to the 15 years since the last Illinois execution and cite the tremendous amount of work and time that went into Kosinski's bill. Three public and well publicized subcommittee hearings last summer in

**H.B. 10 passed both houses and was signed into law by Gov. Thompson June 21, 1977.*

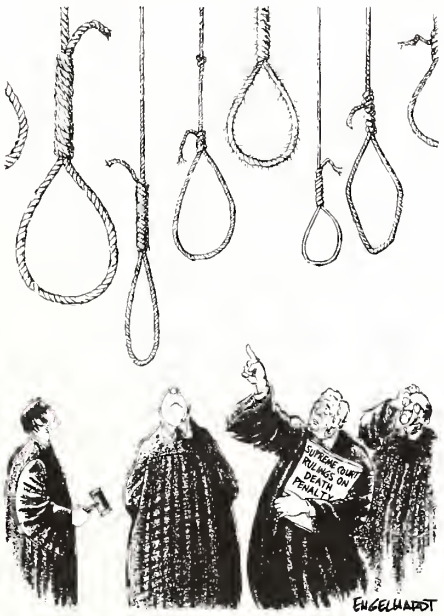
Wheaton, Joliet and Chicago produced reams of testimony, and supporters questioned the need to procrastinate any longer. A few days after the veto session ended, Mann said he would introduce a resolution this session calling for a joint committee "to produce a nonpolitical examination, which could hear persons from both sides of the issue, in a non-emotional, deliberative fashion." Regardless of the fate of Mann's proposal or eventual findings or recommendations of such a committee, he said, "The chances are very good that we are going to get a death penalty law very soon."

There are some alternatives to imposing a death penalty. Some opponents point to a recently released report by a Judiciary II Subcommittee on Adult Corrections, chaired by Rep. L. Michael Getty (D., Dolton). The subcommittee's recommendation for "flat-time," or determinate sentencing, would shift the emphasis of incarceration from the present idea of rehabilitation to punishment. (See *Illinois Issues* series on these proposals, Jan.-March, 1976). Although it would still be a goal of the corrections system to rehabilitate prisoners who wish to be, the subcommittee called the present system of varied sentences, "Capricious . . . an obstacle to rehabilitation . . . without significant results." The idea of mandatory life imprisonment for murder conviction is also discussed, although capital punishment advocates ask what will then prevent a prisoner "with nothing to lose" from killing guards or other inmates. Cedric Russell, a spokesman for the Illinois Coalition Against the Death Penalty, said lawmakers want the death penalty because they lack answers or solutions to the complex problems of crime in society. Russell told a Springfield press conference last November that the death penalty is discriminatory and implies not justice, but "just-us." One lawmaker who said he favors the death penalty voted against it and said, "It might lull people into believing that we're making things all right. It takes attention from the social problems that lead to murder."

Dual trial system for capital cases

The legislation that eventually becomes law will most likely employ a "bifurcated" or dual trial system, whereby one jury determines innocence or guilt and another convenes to consider the applicability of the death sentence. A unanimous recommendation of death would be necessary from the jury for the judge to sentence the defendant to death. The judge would review the entire proceeding and decide whether to honor the jury's recommendation. The House staff member who drafted the bill said it has not yet been determined whether the judge can ignore the jury's recommendation of mercy and sentence the defendant to death. In a further effort to meet the Supreme Court's standards as they apply to reviewing procedures, all death penalty convictions would automatically go to the Illinois Supreme Court for review. Any death sentence found to be improper would lead to an indeterminate sentence of not less than 14 years. Of course, neither Kosinski's bill nor any other introduced would be retroactive, but would apply only to defendants sentenced to death after the law took effect.

Although the U.S. Supreme Court has sanctioned capital punishment, the picture is becoming increasingly muddled as events develop. The U.S. high court recently overturned the capital conviction of a Georgia man on the grounds that a potential juror was eliminated because he expressed reservations about capital punishment. Because many persons share such reservations, the court said, elimination of a potential juror without sufficient questioning to determine if those reservations would prejudice him or her in the case would lead to overturned convictions. An interesting sidelight to that ruling is Cook County State's Atty. Bernard Carey's opposition to capital punishment. Carey, who is the number one legal officer in a county that has as much violent crime as any in the nation, opposes capital punishment because juries are so reluctant to recommend it that the legal system is "corroded" by it, according to Rep. Katz. Thus, capital punishment is a legal quicksand for the courts and lawmakers.



'No, That One Is Too Big And That One's Too Small . . . This One's Not Tied Properly And . . .'

Engelhardt in the St. Louis Post-Dispatch

Statistics can be found to buttress almost any argument for or against capital punishment, and even the U.S. Supreme Court has called the case for and against deterrence "simply inconclusive." Despite this and the myriad moral and religious considerations of the issue, legislators are reacting to what they perceive to be a "clamor for capital punishment."

Gov. Thompson has said he will sign death penalty legislation meeting the Supreme Court's standards. In his position paper on criminal justice, however, Thompson said, "If punishment does not swiftly follow an offense its impact is diminished. The deterrent value of a criminal penalty depends upon swift and certain adjudication." The absolute finality of capital punishment makes mistakes irreparable, and the slowness of the legal system in such cases detracts from the force of any potential deterrent value. In fact, because the Illinois Constitution mandates a Supreme Court review of all death sentences (Article VI, section 4b), speedy disposition of such cases is impossible.

The larger questions of deterrence and rehabilitation behind capital punishment will not be answered when a bill is signed into law to revive executions of the most vicious criminals. For the law to have even the slightest trace of deterrence, it must be enforced. The Gilmore case in Utah has shown the reluctance to carry out what capital punishment laws mandate — state executions. Perhaps underlining this reluctance is Sangmeister's comment, "I'm not eager to see anyone strapped into a chair and have the life burned out of him. I'm not a sadist. There will be few executions; we all know that. But somebody's going to have to pay for murder with his life to set an example."□

By FRANK J. KOPECKY

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The lingering debate on merit selection

Should judges be elected or appointed?

THE QUESTION of whether to elect or appoint judges has had a long and turbulent history in Illinois. Three times in the last 20 years the voters of the state have been asked to vote on constitutional proposals altering the judicial selection process. And the debate isn't over. There are several proposals currently before the Illinois General Assembly which, if enacted, would change the selection method. Proponents of the present elective system are fighting to keep the public directly involved in choosing their judges. Opponents of this method have proposed that judges be selected by a merit plan in which a commission nominates candidates and presents a list for executive appointment.

The issue of judicial selection cuts to the very heart of our national democratic tradition. On one hand, there is a recognition that justice must be administered impartially. Judges must be selected because of their ability as jurists, not simply because of their political affiliations. A judge in deciding a case must be governed by principles of law and the merits of the litigant's case, not the litigant's political position. On the other hand, under our common law tradition, judges, particularly appellate judges, decide cases which become law. Judges are given immense power in this country — power to interpret statutes, review administrative decisions and declare legislative and executive actions unconstitutional. The fact that judges often decide issues of tremendous significance to the general public means that the public *must* retain some control over the judiciary. Actually voting for judges is one means by which the public can exercise this control.

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The root of the selection problem stems from the belief that it is possible to separate law from politics. Law is related to politics as trees are to a forest. It is possible to separate the two, but the result is a pile of dead wood and a barren field. Law grows out of politics; it is the end product of the political system, and the two cannot be separated. Nevertheless, even the most ardent advocate for democratic institutions recognizes that a court of law must be governed by a different set of rules than those which govern the legislative or the executive branches of government. A judge must transcend partisan politics and must definitely strive for justice in reaching a decision. A judge must not be governed by what may be the passing whim of the body politic. Judges have traditionally served as a check on the transient impulses of the legislature or the executive. The crucial factor in choosing a judicial selection process is not to eliminate politics, but to control politics. The issue is simply this: What is the proper blend of political influences and who or what group should exercise the political power to select judges?

Methods of selection

The two basic methods used in the selection of judges in the United States are election and appointment. Elective methods may be either partisan or nonpartisan. In partisan elections the judicial candidate is nominated by a party and runs with a party identification. In nonpartisan elections the judicial candidate is generally nominated in a nonpartisan primary and runs in the general election without a party label. Appointment methods used in other states differ on where the responsibility rests for the important decisions; they are made either by the governor, the legislature or a judicial nominating comission. The method which uses the judicial nominating commission is generally referred to as merit selection or the Missouri plan. (Missouri in 1940 became the first state to adopt the judicial nominating commission system.) Most states use a combination of elected and appointed systems. For example, Missouri uses merit selection for its state appellate and supreme court judges and its trial judges in the counties of St. Louis, Jackson (Kansas City), Clay and Platte, but election is used to select trial judges in the rest of the state. Executive and legislative appointment plans are popular principally among the original 13 states. In many of these states appointments by the governor must have the advice and consent of at least one of the houses of the state legislature.

The federal judiciary is selected by executive appointment. The president makes all judicial appointments with the advice and consent of the Senate, but significant roles are played in the selection process by the senator of the president's party from the state in which the vacancy exists, the Justice Department and the American Bar Association. President Jimmy Carter has taken the first step in selecting U.S. judges on merit by establishing the U.S. Circuit Court Judge Nominating Commission to propose candidates for the U.S. Court of Appeals.

New states admitted to the Union in the early 1800's generally adopted a system of electing judges. The election of judges was consistent with the theories of Jeffersonian Republicanism and Jacksonian Democracy which prevailed during the period. Judges ran for election and retention in partisan elections. Following the Civil War and

the rise of urban political organizations, the popularity of choosing judges by partisan election began to wane. Reformers began advocating the selection of judges through nonpartisan elections. Judges would run in primaries without party labels, and the two with the highest vote in the primary would stand for election in the general election. This movement gained some degree of popularity, and the nonpartisan election is now used in 17 states including Michigan, Minnesota and Wisconsin.

In recent years there has been a decisive, if not overwhelming, trend toward the use of the merit selection or the Missouri plan. According to the American Judicature Society, a citizens group formed to promote court reform, 27 states now select a portion of their judges through a merit selection process. No state has changed to any plan other than merit selection during the last 25 years.

A merit selection plan generally has three key elements: (1) a list of qualified candidates (usually three) developed by a nonpartisan judicial nominating commission made up of lawyers and nonlawyers; (2) appointment of the judge by the governor from the list developed by the nominating commission; (3) a short probation period for the judge followed by a retention election in which the judge has no opponent but must receive enough "yes" votes to be retained.

The major variation in merit selection states is found in the membership of the nominating commission. In some states the majority of the commission is made up of lawyers; in others nonlawyers constitute the majority. The number of commission members selected by the governor or bar associations also varies. In Missouri the nominating commission for appointing trial judges consist of two lawyers elected by lawyers who practice in the district, two nonlawyers appointed by the governor, and the presiding judge of the appellate court which hears appeals from the trial court. In theory, these members vigorously screen candidates and nominate three qualified individuals to the governor, who must appoint one of the three. The makeup of the commission is designed to represent the interests of the bar through the lawyers, the judiciary through the appellate judge, and the general public through the members appointed by the governor. Because of his ability to pick one out of the three candidates nominated, the governor has a significant role in the selection process.

Proponents of merit selection contend that higher quality judges who have greater independence are placed on the bench through merit selection. The qualifications of judicial candidates are thoroughly reviewed by a panel whose members have the expertise necessary to evaluate those characteristics of a good judge. It is also contended that lawyers with exceptional judicial talents are more likely to seek judicial office through this nominating process than through a political nominating process. Lawyers would no longer have to spend years developing political support within the party in order to obtain a judicial nomination. Political influence would be minimized and the independence of the judiciary insured because judges would no longer have to run in partisan elections with the support of the party as is now required. The election system is criticized because a majority of the voters do not know the candidates in a judicial election; judicial campaigns usually attract little attention, and the general public has no criteria for determining which candidate will make a good judge.

Defenders of the election system argue that judges make law and that the public must have a voice in the lawmaking process

Defenders of the election system generally begin with an impassioned plea for democracy. They argue that judges make law and that the public must have a voice in the lawmaking process. It is generally contended that members of racial and ethnic minority groups have a better opportunity to become judges through the local political processes than through a merit selection process. Furthermore, it is argued that politics are not removed from the selection process. Gubernatorial and bar association politics are merely substituted for local politics and the general public is left out of the system.

Illinois system

Supreme court, appellate court and circuit court (trial) judges are elected in Illinois by a partisan system. Candidates are placed on the ballot through a partisan primary or by petition and generally run with party identification and party support. Once elected, judges are prohibited from engaging in political activities, and they seek reelection through a nonpartisan retention ballot. To remain in office, a judge must receive an affirmative vote from 60 per cent of the voters. Only two judges have been voted out of office since the retention system was established in 1964. Supreme and appellate judges serve 10-year terms, and circuit judges serve six-year terms.

All associate circuit judges, approximately 40 per cent of the judges in Illinois, are appointed. They serve four-year terms. The associate circuit judges are selected by secret ballot cast by the elected circuit judges. All associate circuit judges are attorneys and perform virtually the same duties as a circuit judge, but in most counties associate circuit judges are generally assigned to the more routine cases such as minor criminal matters, family law, probate and juvenile court cases.

The history of how Illinois developed its current system of judicial selection points out the political consideration underlying the issue. Prior to 1964, when the judicial amendments to the Illinois Constitution went into effect, Illinois had a totally disorganized court system. There was no centralized court administrative office and there were courts with overlapping jurisdiction in counties and towns. In the early 1950's the Illinois Bar Association and Chicago Bar Association, with the support of several civic organizations, began a

campaign for court reform. This reform had the dual goals of establishing a unified court system and enacting a merit selection plan. Generally, this plan had the support of Gov. William G. Stratton and the Republicans in the legislature, but was opposed by the Democrats, particularly those Democrats from Chicago. In 1957, a compromise was reached in the legislature which passed a proposal for a constitutional amendment for a unified court system but included no changes in the system of electing judges. This proposed amendment was defeated by a slim margin in the statewide vote.

Two reforms

Undaunted, the proponents for court reform almost immediately began another campaign for a constitutional amendment, but the Chicago Democrats continued to resist changes in the patisan election system for judges. The need for a reorganization of the court system was of such importance that the legislature again reached a compromise similar to the one reached in 1957. A constitutional amendment was proposed which created the court system now used in Illinois. In 1962, the voters ratified this amendment which went into effect in 1964. Although the judges were still elected, there were two significant changes. First, judges no longer had to be reelected in a partisan election campaign since the amendments provided for the nonpartisan retention ballot. This change along with the prohibition that judges could not actively participate in political activities tended to make the judiciary less dependent on partisan politics. Second, the appointment system for associate circuit judges was created.

The issue of merit selection surfaced again during the Constitutional Convention of 1969. It was vigorously debated in committee and on the floor, and the convention deadlocked over the issue. Finally, the convention reached a compromise which placed the issue before the general public on the ballot as a special question. In addition to voting on the entire constitution, voters had the option of selecting either Proposition 2A (election of judges) or 2B (appointment). The campaign over the options was vigorous. Mayor Richard J. Daley and the Cook County regular Democrats actively supported 2A. Chicago newspapers, bar associations and civic groups generally favored 2B. In the final tally, 2A won with the approval of 50.2 per cent of the vote. Those favoring 2B cast 43 per cent of the vote and 6.8 per cent of the ballots showed no preference. Ironically, 2B carried Cook County with 50.1 per cent of the vote. Voters in the collar counties of DuPage, Kane and McHenry and the university counties of DeKalb and McLean (Bloomington) also favored merit selection.

Proposition 2A did make one significant change in the election process:

Both the Netsch/Wolf and the McCourt proposals require that appellate and supreme court judges be nominated by a judicial commission and appointed by the governor

judicial candidates are no longer nominated in party convention. The party primary is the principal vehicle through which judges are nominated for the general election, and the Constitution also provides for being placed on the ballot by petition. These changes had the effect of weakening the role of political party leaders in the elections. Current Supreme Court Justices James Dooley and William Clark defeated candidates backed by the Cook County Regular Democratic Organization in the 1976 judicial primary, and they won in the general election.

Legislative proposals

The debate lingers on. There are six proposals now pending in the General Assembly to modify the partisan election system. Most of these proposals would lead to a constitutional amendment and a referendum by the general public. Five of these bills propose a merit selection plan with a judicial nominating commission. One proposal would require nonpartisan election. Four of the five merit selection plans are very similar, and therefore only two of the proposals will be analyzed. In the Senate, Sen. Dawn Clark Netsch (D., Chicago) is the principal sponsor of Senate Joint Resolution/Constitutional Amendment 37 (SJR/CA 37) which is virtually identical to House Joint Resolution/Constitutional Amendment 1 (HJR/CA 1) sponsored by Rep. Jacob Wolf (R., Chicago). The other merit selection proposal which significantly differs from the Netsch/Wolf proposal is HJR/CA 35 sponsored by Rep. James McCourt (R., Evanston), and it has the support of the Illinois State Bar Association. Both the Netsch/Wolf and the McCourt proposals require that appellate and supreme court judges be nominated by a judicial commission and appointed by the governor.

On the circuit court level the Netsch/Wolf plan would allow any county by referendum of its voters to adopt merit selection for its associate and circuit court judges. The McCourt proposal would mandate merit selection in the Cook County Circuit Court and would allow other counties to adopt merit selection. Both proposals are constitutional amendments which require a statewide referendum.

The proposals vary in the makeup of the nominating commission and the role which the governor plays. The Netsch/Wolf plan would authorize an 11-member commission for judicial circuits other than Cook County. A slightly larger commission would be used in Cook County. The commission in each circuit would consist of six nonlawyers and five lawyers. The nonlawyer members would be appointed by the governor with the advice and consent of the Senate, and no more than three of the nonlawyers could be members of the same political party. The lawyer members would be elected by the lawyers who practice and reside in the circuit. The governor would appoint one of the nonlawyers chairman, who could vote only in case of a tie. The nominating commission would review applicants for a vacancy and nominate three persons.

The governor would choose one of these three candidates to serve as judge for a six-year term. At the end of the term, the judge would be on the ballot in a retention election.

The McCourt Plan for judicial circuits has a much more complicated method for selecting commission members. The role of the governor is reduced, the roles of the bar association and the local political parties are increased and the judiciary is also represented on the nomination committee. Specifically, the nominating commission would consist of five nonlawyers, six lawyers and a judge. The judge would chair the committee and could vote only in the case of a tie.

Two of the five nonlawyers would be selected by the governor from different political parties. Each chairman of the two political parties would select one nonlawyer member. The fifth nonlawyer would be chosen by lot from a list prepared by the president of the local bar association, and the list would include one candidate from each of the major political parties in the circuit. Selecting the six lawyer members is even more complicated. One lawyer would be selected by the Democratic organization chairman and one by the Republican organization chairman of each county. The four remaining lawyers would be selected by the governor from a list of lawyers elected by the lawyers in the district. The governor would have one free choice from the list, but the remaining choices would be restricted to the lawyer who received the highest number of votes and who is of a different political party than the lawyer last appointed. The judge member of the commission would be elected by the judges in the district.

The nominating commission would review all candidates for a judicial vacancy and submit three names to the governor. One name would be chosen by lot, but the governor could accept or veto this candidate. If the governor vetoes the candidate, another candidate from the list would be selected by lot and would become the judge. Judges selected under this provision would not face a retention election until the expiration of their full term. The McCourt plan requires that the nominating commission review each candidate for retention and indicate whether the judge continues to be qualified. If the finding of the committee is negative, it would appear on the retention ballot.

Proponents of the McCourt plan argue that the complicated method for selecting the nominating commission is necessary to ensure that conflicting interests are represented. By using random selection and limiting the governor's discretion in selecting commission members, they contend that local interests are protected. Critics counter that the plan would deny the general public any voice in the process and would give too much power to local political parties and local bar associations. The McCourt proposal is clearly not a nonpartisan plan, but it does attempt to balance the various partisan and professional interests.

The remaining proposal in the legislature, House Bill 2267, sponsored by Rep. Woods Bowman (D., Chicago) would change the election method from a partisan to a nonpartisan system. This change could be implemented by legislative action without the need for a constitutional amendment. Candidates for judge would run in a nonpartisan primary; no party designation would be allowed. Candidates would become eligible for the primary by filing petitions with the signatures of 500 qualified electors. The candidates who receive the two highest number of votes would run in the general election without party label. Proponents claim that this plan would reduce the political parties' control over the primary and would lead to a more independent judiciary, but critics of Bowman's proposal contend that parties would still become involved behind the scenes. Furthermore, party labels, for better or for worse, are one of the few indicators the public may have of the judicial philosophy of a candidate.

All of the proposals pending in the legislature are now on the Interim Study Calendar in their respective houses of the General Assembly. The Illinois Bar Association has endorsed the McCourt plan. A citizens committee, the Committee on Courts and Justice, has endorsed the Netsch/Wolf proposal and is preparing a campaign to actively work for its adoption. If either proposal passes in the General Assembly, voters of Illinois may be given their fourth opportunity in 20 years to vote on judicial reform.

The voters will hear claims that one system or another leads to a better judiciary and minimizes political interference. In analyzing these claims, it must be kept in mind that law cannot be separated from politics. The issue is not eliminating politics from the selection process, but determining the proper amount of political control and from what source. In analyzing merit selection plans the membership of the nominating commission becomes crucial. The commission not only evaluates the technical qualifications of judges, but has a significant role in determining the future philosophic and political viewpoint of the judiciary. The public must be certain that this commission adequately represents the views of the general public.□

By ED NASH

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Is it a protection for citizens or an instrument for prosecutors?

The grand jury system

SHIELD OR SWORD? Is it the "true tribunal of the people" or is it an administrative arm of the prosecutor in criminal cases? The questions are about the grand jury system and they have been debated for more than a century in Illinois. Now, with the new Illinois Constitution in effect and with increased interest on the federal front, the debate has increased in intensity.

Surprisingly, there has been relatively little change in the grand jury system which the United States and its individual states inherited from Great Britain where its history dates back more than eight centuries. Illinois, however, may be the No. 1 exception in the Union.

Contrary to some misconception, King Henry II established the "Grand Assize" in 1166 to gather information about criminal activity from the citizenry. It took more than five centuries for the classical argument in favor of the grand jury system to develop: That it stands between the people and the state, specifically between an accused citizen and the prosecutor. The argument rests on the belief that the grand jury prevents the prosecutor from bringing an unfounded charge against a totally innocent person for malicious reasons or without sufficient cause. This idea evolved from a 1681 case in which an English grand jury refused to grant the request of the king's prosecutor for an indictment against a nobleman accused of treason. Thus was born the concept that citizens on a grand jury would countermand an overzealous or malicious prosecutor with a weak or contrived case, particularly in a charge of sedition.

The grand jury was a well-established institution by the time of American colonization, and it was firmly rooted in the British soil of North America. At the time of the American Revolution, grand juries were understandably popular because, in many cases, they stood between American patriots and the Crown's prosecutors. It was little wonder that, when the U.S. Constitution was drafted, the grand jury system was incorporated into the Bill of Rights to protect the citizen from unjustified prosecution. And the U.S. Supreme Court has consistently upheld it, declaring in *Hoffman* v. *U.S.*: "The most valuable function of the grand jury is to stand between the prosecutor and the accused."

> 'It has become in effect an administrative arm of the office of attorney general or district attorney'

The states of the Union followed suit in their state charters, Illinois among them. Since that time, however, the feeling has developed that, in the hands of a determined and/or publicity-seeking prosecutor, the grand jury has become a sword rather than a shield for the citizen, that it has become easier and easier for prosecutors to use the grand jury as an instrument for their own purposes.

The new Illinois Constitution apparently recognized this perception when its framers eased the requirement for altering the grand jury system. The previous, century-old state Constitution (Art. II, Sec. 8) provided only for total abolishment "by law in all cases" of the grand jury system; no alteration was permissible except its total elimination. The new Constitution (Art. I, Sec. 7) provides that the Illinois General Assembly may abolish the grand jury "or further limit its use," which opens the way for possible changes in the system. But the questions remain: Is the grand jury sword or shield? Or, in the words of James P. Shannon, former president of the College of St. Thomas in St. Paul, Minnesota, is it "the true tribunal of the people" or an arm of the prosecutor?

While a law school student in New Mexico five years ago, Shannon wrote that Thomas Jefferson — in a petition to the Virginia General Assembly — termed the Anglo-Saxon tradition of trial by grand and petit jury "the true tribunal of the people." However, Shannon has said more recently that "numerous weaknesses in the modern operation of the grand jury system have come to light . . . [it] has become in effect an administrative arm of the office of attorney general or district attorney, it no longer enjoys public confidence, is frequently a device for the miscarriage of justice."

Nevertheless, the grand jury system remains in the U.S. Constitution. There has been no tinkering with the Bill of Rights since 1789, and 28 of the 50 states in the Union require grand jury indictment either by constitution or statute. But during this decade in Illinois, there have been efforts to change the grand jury system drastically.

Advocating a commission to study it, state Rep. John S. Matijevich (D., North Chicago) said in 1973 that "we must determine whether the initial

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purpose of the grand jury to stand as a safeguard between the prosecution and the accused is still preserved under the present system . . . if it is no longer the buffer that it was intended to be, we might be better to replace the grand jury with the information and complaint process."

Writing in the *University of Illinois Law Forum* the same year, then state Rep. Brian B. Duff (R., Wilmette) and Arthur E. Harrison, a House Judiciary Committee counsel, said: "The grand jury serves at best no useful purpose, and at worst may be subject to abuse by a prosecutor with either personal or political motives . . . it is a rubber stamp for the state's attorney and not an independent institution protecting a defendant's right."

Then, two years ago, then Gov. Dan Walker signed into law legislation which some lawyers (including Duff, now a Cook County Circuit Court judge) said brought the most significant changes in the grand jury system in Illinois history. Considered the key bill in the series was one that permitted a state's attorney to bypass the grand jury and prosecute a felony case by filing with the court an information, a formal charge drawn by his office equal to an indictment from a grand jury.

Duff, who handles felony cases in circuit court, says that the most significant bill in the approved package was the one which provides that a person charged with a crime or the target of a grand jury probe can have his lawyer in the grand jury room with him. "That is the first real modification of the nature of the grand jury itself," Duff contends, and Illinois was the first state in the Union to make it state law. For some reason, he adds, "The existence of the Illinois law has been little noted."

The third bill in the grand jury series enacted into the law in 1975 was one that provides that a transcript be made of the prosecutor's questions and witnesses' answers during the secret grand jury sessions. The "bypass" law definitely has decreased the use of the grand jury, Duff says, and has also decreased the time for a trial to get under way. "It used to take three months to get an indictment in Cook County," he points out. That was critical because of the Illinois law which says that no more than four months can ensue between when a person is arrested and when he must go to trial, unless the defendant himself has caused any delay.

An attempt was made to amend the law last year in the General Assembly, to give prosecutors a new 160-day pretrial period after a defendant out on bond caused a trial delay. The change would have exempted those on bond from suspension of the time rule covering those in custody. The change passed the legislature but died when the governor made an amendatory veto to clarify the bill (S.B. 728), and an override attempt failed in the House. Otherwise, the defendant goes free without trial. One result of the "bypass" law, the lawmaker-turned-judge says, is that smaller counties in Illinois "do not use the grand jury at all."

Capsulizing the three grand jury laws in Illinois, Duff says: "The 'bypass' has decreased the use of the grand jury . . . the transcript has brought reporting of the grand jury . . . and the lawyer-in-the-grand-jury-room has modified its actual nature." Reiterating what he said the day the three grand jury bills were signed into law, Duff calls it "a happy day for the criminal justice system."

In their 1973 article, Duff and Harrison cite statistics to back up their contention that "generally speaking, the grand jury often degenerates into a rubber stamp wielded by the prosecutor." In the early 1930's, they said, University of Oregon Law School Dean Wayne Morse (later U.S. senator from Oregon) studied 162 prosecutors in 21 states, including Illinois, and out of 6,453 cases in which the prosecutor expressed his own preferences, the grand jury disagreed on only 348 — 5 per cent. Further, they said, statistics can be misleading. A 1964 study of the Cook County grand jury, they said, revealed that, out of 4,239 indictments sought, the grand jury returned 3,862 true bills (indictments) and 377 no-bills — some 10 per cent — refusals to indict. They said, however, that an assistant state's attorney working with the grand jury for more than two decades estimated that about 90 per cent of the no-bills came from such a practice as knocking out all the charges against a defendant except the one for which he was indicted. In the final analysis, they said, the "best balance of interest — saving time and resources, minimizing abuses and limiting the amount of politics in political cases — requires elimination of the grand jury indictment, with one exception." Their lone exception was cases of official misconduct, where they would have a panel of citizens make the determination of probable cause.

It is ironic, perhaps, that while the questions persist over the future of both county and federal grand juries, Gov. James R. Thompson and Atty. Gen. William J. Scott have joined forces to push for passage of legislation to permit a statewide grand jury system in Illinois. Although many might argue against the specific proposal, few would quarrel with what the governor stated was its purpose: "To permit the attorney general to attack consumer fraud and other abuses of the public on more than a countywide scale [to] benefit all law-abiding Illinoisans." Such measures have been offered in the General Assembly before and, thus far, have met defeat.

Meanwhile, the American Bar Association (ABA) and the Congress are getting into the grand jury act. Meeting in Chicago this summer, the ABA House of Delegates voted, by a 2 to 1 margin, for a proposition that witnesses before a grand jury should have the right to be accompanied by an attorney. There was little note that such a provision had been the law in Illinois since 1975. Under the proposal, lawyers are allowed to advise their clients but are forbidden to take any active part in the grand jury proceedings. In almost all states, a witness before a grand jury must leave the grand jury room to consult with his lawyer, who is forbidden entrance. Backers of the ABA measure said that the frequent trips in and out by a witness give an impression of guilt and increase

the possibility of his indictment if he is being investigated.

U.S. Atty. Gen. Griffin B. Bell, on record in favor of grand jury reform in principle, told the ABA House of Delegates that the "remedy proposed is much broader than the wrong you have found" and could damage the grand jury process by "overkill." Another opponent, Benjamin Civiletti, chief of the U.S. Department of Justice Criminal Division, said that the proposal would "impede fact-finding by the grand jury," particularly in cases involving organized crime, drug abuse and white-collar crime."

At the same time, Richard E. Gerstein, Dade County (Fla.) state's attorney and chairman of the ABA's Grand Jury Committee, told the ABA convention that grand juries are in danger of being abolished or having their power cut severely unless major changes are made to curtail abuses by over-zealous prosecutors. "We want to preserve the system," Gerstein was quoted, "because, when it functions as it was intended, it can be an effective buffer between innocent people and the state, and it gives citizens a chance to participate in the criminal justice system." Both Civiletti and Gerstein were touching apparently, too, on the independent investigatory powers of the grand jury, which critics say grand jury members rarely know about or utilize to the fullest extent.

Grand juries can be an effective buffer between innocent people and the state

Currently in Washington, a U.S. House Judiciary Committee subcommittee is taking expert testimony on the grand jury system. It has been pointed out that from 1970 to 1973 during the administration of former President Richard M. Nixon, agents of the Justice Department convened some 100 grand juries in 80 cities in pursuit of various radicals. There were far more jail terms for contempt of the grand jury (refusal to answer questions) than convictions on charges sought by the department.

In a new book published in June 1977 by Hill and Wang, *The Grand Jury: An Institution on Trial,* U.S. Judge Marvin Frankel and Attorney Gary Naftalis state that the grand jury "has served too often to harass the unorthodox and the unpopular." Among reforms they suggested — and incorporated in a bill introduced by U.S. Rep. Joshua Eilberg of Pennsylvania — is the one endorsed by the ABA delegates (and part of Illinois law): to permit a witness to bring his attorney into the grand jury room. Others would limit jailing for refusal to answer questions to six months, instead of the present limitless term, and completely immunize a witness from prosecution for any offense discussed during his appearance.

Meanwhile, opinions about the grand jury system continue to vary. U.S. District Judge William J. Campbell, the retired former chief judge in Chicago, says that "the grand jury is the total captive of the prosecutor who, if he is candid, will concede that he can indict anybody, at any time, for almost anything, before any grand jury." But the late Casper Apeland, longtime chairman of the Lake County Jury Commission, which interviews and assigns residents of the county to both grand juries and trial court juries, used to call grand juries "public watchdogs." Apeland said, "Grand juries have authority and power which is delegated to no other public body. Not only do they bring indictments in cases brought to them by the state's attorney; but they can initiate their own investigations of public officials . . . in effect, they are public watchdogs."

Disagreeing, Melvin M. Belli, the noted trial attorney, says, "The grand jury is the second most outdated and unprotective of the individual systems remaining in today's otherwise good American trial law." (Belli's first: the coroner system.)

Two others take a middle ground. Paul M. Lukes, writing in the spring 1969 *John Marshall Journal of Practice and Procedure,* recommends that the indictment function of the grand jury be replaced by an information system, while the grand jury be retained in its investigatory capacity." Richard M. Calkins, a Chicago lawyer, says that "adoption of the dual system, the state's attorney's information and the grand jury's investigation, would give Illinois a more efficient and economical judicial system."

For what it is worth, Great Britain, the nation where it all began, abolished the grand jury by Act of Parliament in 1933 — 45 years ago. Citing that historical fact, Shannon, the college president turned law school student, can probably be forgiven for placing tongue in cheek and stating: "A span of four decades is a decent interval for us to allow before rushing to adopt any innovation in the law merely because the English have done it already."□

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By WILLIAM LAMBRECHT

Surviving the shakedown

Pollution Control Board

Buffeted by legislative potshots, threatened with federal preemption and enmeshed in a jurisdictional conflict with Atty. Gen. William J. Scott, the Pollution Control Board has 'won a few and lost a few' since its creation in 1970 to 'determine, define and implement' the state's environmental control standards. By the end of 1976, the board had levied almost $2 million in penalties, won a landmark Lake Michigan decision and had at least slowed down the rate of pollution in the state

WILLIAM LAMBRECHT
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BACK IN 1970 during the fervor of Earth Week, when a cause was a cause, by God, and something had to be done about nearly everything, the environmental movement helped create the Illinois Environmental Protection Act and its enforcement agency, the Pollution Control Board (PCB). Now, nearly seven years later, the shrill and passionate outcries of reformers are muted, but the Pollution Control Board remains. The board has grown into a sharp-toothed, yet restrained regulatory agency. Although it is constantly threatened by the bureaucracy of which it has become a part, the PCB today can make the state's biggest industries cower and curse as they cough up millions for pollution control equipment.

The PCB is the only state board of its kind in the country which sets regulations and adjudicates enforcement proceedings for air, water, land and other pollutions. But courts have struck down some key regulations, such as sulfur dioxide and particulate emission standards. And industry advocates in the General Assembly, labeling the PCB as autocratic, arbitrary and anti-business, continue to take shots at the board's structure and powers. Adding to the board's problems, many average citizens and farmers have reacted bitterly to open-burning bans and grain storage regulations.

Generally, the quasi-judicial powers of the PCB have been upheld in court. Despite major changes in its personnel, the five-member board has survived legislative attacks and the political vicissitudes of administration changes. Illinois business is also still intact, though some of its investment capital may have been diverted. "We've been here seven years now, and Illinois has not collapsed," says board chairman Jacob D. Dumelle. "When we first started, everybody said, 'My God, you're going to ruin Illinois and shut down the factories.' Well, the courts have generally upheld us, and that collapse hasn't happened."

It is uncertain whether Illinois is measurably cleaner than seven years ago, but there's evidence that the tide of pollution has been stemmed, which may be the best environmentalists can hope for. Whether because of industry compliance with PCB regulations, or the sluggishness of bureaucracy, the PCB caseload has dropped nearly 30 per cent this fiscal year to around 350. Both requests for variances from board standards and penalties have also declined. Even the PCB appropriation is down from a high of $813,000 in fiscal year 1972 to a present $748,000 — unusual for a government agency.

A few major worries

Aside from a few identity problems, the limitations of a small staff of 19, and some reflections on the "true spirit of the act," the PCB has only a few major worries. One is the increasing trend towards federal preemption and the lengthy process of appeals.

Of greater immediate concern is the fact that the board has become enmeshed in the dispute between executive agencies and the Illinois attorney general over legal representation. Atty. Gen. William J. Scott, elected in November to an unprecedented third term in office, maintains he is the sole legal agent for the state and its departments, and controller of all legal funds for the PCB and other agencies. Because of the vagueness of the Constitution's definition of the attorney general as "legal officer of the state," the matter was in court for more than two years prior to a state Supreme Court ruling late last year (*People ex rel. Scott* v. *Briceland*, see p. 27).

The high court decision affirmed a

Sangamon County Circuit Court decision holding unconstitutional section 4 (e) of the Environmental Protection Act which states that EPA shall have the function "to prepare and present enforcement cases before the board. . . ." Even before the ruling, Scott insisted on representing the PCB and its partner in enforcement, the Environmental Protection Agency (EPA), in the same case. Both agencies, however, have clung to the wording in the Environmental Protection Act, which says the EPA is to "prepare and present" cases before the PCB, which serves as the judge.

Attorney general conflict

Board chairman Dumelle, who normally maintains a low and judicious profile, sees "basic inherent conflicts" in Scott's representation of both pollution control agencies. "There's a legal ethic that you can't be on both sides at the same time," says Dumelle, an engineer and the only member still serving from the original board. "Scott ought to say 'get your own counsel, and I'll pay for it.'"

In a number of cases, Scott has simply removed himself from proceedings, causing problems for the board. In three appeals cases late last year, Scott stepped out leaving the PCB with no counsel. Those cases left dangling were *EPA* v. *Petersen Puritan, EPA* v. *Caterpillar Tractor* and an appeal on a solvents regulation that had been struck down. "We're in a big fight about it right now," Dumelle says. "Scott has pulled out and told us we could represent ourselves. But he hasn't provided the funds, and we're not budgeted for it."

The major effects of the attorney general's questionable representation, however, occurred early last year when the state Supreme Court upheld an appellate court ruling that knocked down the PCB's sulfur dioxide control regulations (*Commonwealth Edison* v. *PCB*). The reversal of these embattled sulfur dioxide standards was perhaps the most traumatic event for both the board and environmentalists in recent years. Former board member David P. Currie, in a law text he authored called *Pollution*, indicates the frustration. "As the Illinois board after the decision, what would you do? Appeal? Start all over? Abandon the effort to regulate power plant emissions? Go back to teaching?" Currie went back to teaching.

But prior to the Supreme Court's decision, Commonwealth Edison had actually agreed to drop the proceedings and vacate the appellate ruling after working out a long-range agreement with the EPA to install more than $100 million in pollution control equipment. But Scott, as attorney for the PCB, persisted in the case, seeking a test of the controversial sulfur dioxide regulations. These regulations have been complained about by Illinois industry and coal producers since schedules for particulate emission control were laid down in the 1972 Clean Air Act.

Scott and the board could have been out of the proceedings with the sulfur dioxide regulations intact. But Scott, who has carried on a running battle with the EPA, refused to accept the arrangement. Soon after, the Supreme Court upheld the lower court decision and ordered the regulations held in abeyance for further study. Scott defends his handling of the case, though he is reluctant to discuss details. "EPA proposed their own deal or whatever you want to call it giving the utility people the excuse to divert our case," Scott says. "Our position is that it is our responsibility to the people of the state . . . the EPA has been arbitrary and making bureaucratic decisions we don't think they have a legal obligation for making."

"He's not following the client," Dumelle counters. "He's saying, 'in the name of the people, I have a right to stand out here and go a different way.' If you give him veto power over the board, then why in the hell are we here? The attorney general cannot prejudge PCB regulations."

In another high court setback last year, the board was prohibited from assessing fines in variance cases. Under statute, the board may issue variances, or permits allowing up to a five-year delay on compliance with emission standards, while a compliance schedule is being implemented. Though restricted in variance cases, the board has retained through court decisions its use of fines in enforcement proceedings, and up until last November had levied a total of $1,809,529.12 in penalties. The largest fine issued was $149,000 in *GAF Corp.* v. *EPA* for foot-dragging in controlling a discharge of three million gallons of pollutants per day. The board, however, later accepted $50,000 in settlement.

The PCB has made an attempt to limit fines on local governments. In *Springfield* v. *EPA*, for example, the board assessed only a $1,000 penalty, despite excessive violations in sewage treatment compliance. In that decision, the board wrote: "If the city was a private individual or corporation, we think a penalty of $20,000 would be appropriate. Taking money from the public treasury, however, must be a last resort, since it punishes the relatively innocent public and diverts funds from the task of cleaning up the water."

Federal preemption

The PCB and parallel agencies such as California's water control board and Pennsylvania's appellate level pollution control agency are encountering increased federal preemption of state jurisdiction. Illinois' pollution control mechanism has always been interrelated with the federal government. Board-enacted regulations dealing with air pollution become part of the Illinois implementation plan under the federal clean air act, and federally enforceable.

Although drafters of the Illinois act gave the PCB power to issue permits for nuclear power plants and nuclear fuel reprocessing plants, states were preempted in nuclear control in a 1972 U.S. Supreme Court decision. Additionally, states (except California) are not allowed to regulate auto emissions from new cars. Also, recent indications are that aircraft noise levels may only be

Illinois Environmental Protection Act of 1970

In addition to the Environmental Protection Agency and the Illinois Institute for Environmental Quality, "There is hereby created an independent board to be known as the Pollution Control Board, consisting of 5 technically qualified members, no more than 3 of whom may be of the same political party, to be appointed by the Governor with the advice and consent of the Senate . . . .

"The board shall determine, define and implement the environmental control standards applicable in the State of Illinois . . . .

"The board shall have authority to act for the State in regard to the adoption of standards for submission to the United States under any federal law respecting environmental protection." (Excerpted from *Illinois Revised Statutes*, 1975. Chapter 111½, section 1005.)

'Our regulations speak for themselves. We're pretty much set now, and people in the system know it'

regulated at the federal level. Dumelle, testifying before a subcommittee of the U.S. Senate Committee on Public Works, said, "If a governmental unit, be it state or local, feels it wants to protect its citizens, it ought to be able to do so, and ought not be preempted unless overwhelming national interest dictates otherwise."

At times, though, the board has limited its own jurisdiction. When a citizens' petition sought a PCB limit on smoking in certain public places, the board held that air indoors was not included in the scope of the 1970 enabling act, except to the extent of occupational exposure covered by other laws.

Political potshots

The opponents within the state structure, however, have provided the most constant threats to the board. At the end of 30 months of PCB regulations, the General Assembly began to drastically increase its attacks on board jurisdiction and powers. In the 1973 session, an anti-PCB coalition failed in attempts to limit regulations on grain crops and livestock operations to levels not more stringent than minimal federal standards. A similar bill restricting grain elevator regulations passed both houses but was vetoed by Gov. Dan Walker. An override attempt fell short. Victories were evenly divided in the early battles, although the General Assembly did succeed in overturning the PCB statewide ban on open burning.

In those days, the most vocal board opponent was the controversial Webber Borchers, Republican House member from Decatur who has since been drubbed out of the legislature after circuit court convictions on theft and official misconduct in an expense-pocketing scheme. Borchers was emblematic of frustration at the board from certain sectors. One day, when he repeatedly confused the PCB and the EPA in a House committee hearing, a fellow lawmaker pointed out his error, and Borchers replied, "Well, they're the same damn thing." Just two months after Borchers' November 1974 indictment, the PCB found the EPA guilty of violating state regulations by not properly declaring ozone watches. In an unprecedented 5-to-0 decision, the board reprimanded the agency for arbitrarily changing ozone watch and alert levels in "backroom policy sessions."

General Assembly members regularly take potshots at the PCB's unique review structure. Hoping that local courts would ease the impact of PCB regulations, House and Senate members began filing bills in 1972 to change the act's initial appeal court from the appellate level down to circuit courts where actions are initiated. The perennial legislation has failed. PCB member James L. Young says, "The biggest danger to the board is adding on layers of review like the circuit court. That could add a year or two on to the whole enforcement process."

In the most emotional battle, which included business organizations and environmental groups, pro-industry forces in the General Assembly argued for legislation requiring economic impact statements on all board regulations. Such a bill, which would both highlight pollution control costs and slow down the enforcement process, finally passed in 1974 but was vetoed by Gov. Dan Walker. Environmental leaders argued at the time that language in the bill calling for studies of "all existing regulations" could result in court injunctions against enforcement while the studies were being carried out.

Legislative scoreboard

A year later, after some language moderations and the addition of some emergency health amendments added in bargaining, the bill passed and was signed by the governor with grudging PCB support. "We knew it was in the wind. Adding on the health amendments was the best we could do," Dumelle recalls. "You lose some, but then you win some. All you can do is tally them up," he adds. The board did win a legislative battle when a move requiring one board member to be from the agricultural sector fell short. The act presently stipulates only that the board be made up of "five technically qualified members."

In what may indicate a new respectability, General Assembly attacks on the PCB decreased markedly in the 1976 lawmaking session. Apart from another attempt to remove the board's appellate court privileges, the only anti-board bill passed last session (removing the board's control over noise pollution at sporting events) was vetoed by the governor. Much of the old bitterness appears to have waned. The only crass political attack against the board occurred late in the 1976 spring session when the confirmation of Dumelle and two other board member reappointments was held up. After nearly two months, however, Senate Democratic leadership saw the futility of gamesmanship with a lame-duck governor, and the board members were approved by the Senate Executive Committee on Appointments and Administration.

Board turnover

But what the General Assembly didn't do last session, to board members' chagrin, was agree to a proposal hiking members' salaries from $30,000 to $37,500, and the chairman's salary from $35,000 to $42,000. Those salaries have been locked in since the board began in 1970. "It somehow doesn't seem right," Dumelle laments, "when you look at the Chicago Metropolitan Sanitary District where they have five department heads earning over $50,000 and many in the $40,000 range."

The General Assembly's refusal to raise salaries, according to Dumelle, may be contributing to the high turnover rate of members except for Dumelle. Serving on what is now the third complete board are Dumelle of Oak Park, Young of Springfield, Philip Zeitlin of Chicago, Irvin G. Goodman of Medinah and Dr. Donald P. Satchell of Carbondale.

Of the nine members who have left, seven have returned to private law practices or taken government jobs, and two have returned to university slots. One former member, Sidney M. Marder of Peru, served as director of the Energy Division in the Department of Business and Economic Development in the Walker administration and has recently set up his own consulting firm.

Throughout its deliberations, the board has consciously attempted to

avoid extralegal confrontation and publicity. It has taken nearly seven years for the PCB to shed what Dumelle calls "the wild-eyed environmentalist stigma." Board members appear anxious to stay out of the limelight. "I don't think there's any need for explosive speeches or press releases and that sort of thing," Dumelle says. "Our regulations speak for themselves. We're pretty much set now, and people in the system know it."

News coverage

The PCB operates circumspectly behind a formidable array of writs, motions and orders with virtually all its activities unnoticed by the public. Press coverage is generally limited to brief newspaper blurbs, usually on the back pages. Because variance and enforcement cases are subject to appeal within 35 days, Dumelle and members are aware that public comments could prejudice the outcome. Also, written opinions from courts are normally slow to follow decisions, making difficult any timely public release of information. In addition to sparse news coverage, the board's only regular link with the public is the twice-monthly *Environmental Register*, a soporific document which has usually lost its news value by the time the third-class mail has delivered it to newspaper offices. Unless one really has a stake in the dealings, the *Environmental Register* is quite a chore to read.

An October edition, for example, begins with the less-than-explosive headline: "Board Adopts Combined Sewer Overflow Deadline Extension." The next item announced a sludge disposal workshop. In the earlier days of environmental fervor, the mailing list was 10,000 persons long. Now only 3,500 subscribe to the free *Environmental Register.*

Citizen complaint power

One of the little known areas of citizen participation with the PCB is the statutory right of any person or group to bring before the board complaints against polluters. In more than six and a half years, however, only slightly more than 100 such cases have been filed. Many of these were promptly thrown out as "frivolous" or "duplicitous" because of crude, nonlegal presentation and argument. As former member Currie writes in the *Northwestern University Law Review*,* "the complainant must establish not only the existence of the violation but also the justification for the requested order." Most citizens' initiative cases couldn't complete such a highly legalistic task.

One citizen-initiated case, launched by the League of Women Voters, resulted in what has been called a "landmark" decision. In *League of Women Voters* v. *North Shore Sanitary Dstrict*, a board decision resulted in a building ban in eastern Lake County for more than a year. The North Shore Sanitary District was required by action of the PCB to issue $55 million in bonds for the cleanup of Lake Michigan shoreline. Beaches there which had been closed later opened. "Lake Michigan may be a little safer because of that case," Dumelle says.

Another bureaucracy?

One concern which has surfaced because of the PCB's distance from the public is the maintenance of the spirit and commitment that characterized the board at the very beginning of its operation. Is the PCB simply another self-perpetuating cog in state government bureaucracy now? Or is it different? "Some people may think we're bureaucratic, but we're not," Dumelle contends. "We keep trying to examine ourselves so we don't end up in some crazy procedure just because it is a procedure. We try to keep things open, and keep the spirit of the act, with open files, open hearings, adequate notice and citizen participation." Board activities and research constantly turn up new and unfolding environmental problems such as ozone depletion, polychlorinated biphenyls in Illinois waters and asbestos pollution.

But by the structure of the Illinois Environmental Protection Act, the board is not free to forewarn the public that danger exists. It is, to some extent, both a lawmaker and a judge, but not a siren. "After all, a judge can't go out and write traffic tickets," says Dumelle, who had just skipped out of an Illinois Recreation Council picnic and returned to his Chicago Loop office. "The reason I left early," Dumelle adds, "is that they were all going coho salmon fishing. And everybody knows that the fish in Lake Michigan are loaded with polychlorinated biphenyls."□

*David P. Currie, "Enforcement Under the Illinois Pollution Law," *Northwestern University Law Review* (July-August 1976).

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By GEORGE PROVENZANO

Natural gas supply and regulation

Keeping Illinois warm

THE WINTER of 1976-77, one of the coldest in decades, brought the people of Illinois face to face with the nation's chronic gas shortage problem. As the mercury dropped, gas consumption increased to near record levels, but because of insufficient supplies, several utilities in the state were forced to reduce or to terminate gas deliveries to large industrial users, commercial establishments and some schools in order to maintain service to residential customers. While gas cutbacks to users in Illinois were not as sharp as those in Ohio, Pennsylvania, or New Jersey the situation here could easily have been much worse.

The problem in Illinois

Cutbacks in retail gas service by utilities in Illinois and other states are symptoms of a long-term national problem that has become increasingly serious in recent years. Simply stated, the problem is that overall gas demand exceeds supply. Since 1971, production of natural gas for delivery to interstate pipelines has been less than demand even though estimated reserves of natural gas are more than adequate for meeting the nation's needs. An important element of the shortage problem stems from Federal Power Commission (FPC) regulation of the gas industry. The federal Natural Gas Act of 1938 provides FPC with authority to establish rates for transporting and reselling gas in interstate commerce. The government controls transmission rates because pipeline companies are viewed as having monopoly power over the shipment of gas from the point of production to the point of retail distribution. FPC determines transmission rates in the same manner as the Illinois Commerce Commission determines retail gas and electric rates. In 1954, in a controversial decision (*Phillips Petroleum Co. v. Wisconsin, et al.* 347 U.S. 672) the U.S. Supreme Court ruled that FPC was also required to regulate the price at which producers sold gas to interstate pipelines. Prior to the decision, increases in the wellhead price of gas were automatically passed on to consumers. It was argued that although transmission rates were regulated by the federal government and retail gas rates by state public utility commissions, consumers were not protected from increases in wellhead prices which were controlled by producers. In order to prevent unjustified price increases, the court held that FPC had a mandate to regulate wellhead prices.

During the 1960's, FPC followed a policy of holding wellhead prices down. As a result, the price of gas paid by pipelines did not increase in step with the costs of production or developing new supplies. Producers had little incentive to increase gas production for delivery to interstate pipelines or to explore and drill for new reserves. The latter is reflected by a decline in proved reserves of natural gas beginning in 1967, when, for the first time, annual production exceeded annual discoveries and additions to reserves.

Declining reserves, of course, may indicate more severe gas shortages yet to come. Total marketed natural gas production has also declined, but only since 1973. Furthermore, the latest FPC gas production statistics show that the decline in marketed production is leveling off at 20,000 billion cubic feet (BCF) per year. This indicates that gas production has not yet been noticeably constrained by declining reserves, a trend which obviously cannot continue indefinitely.

To understand why there are gas shortages in some states but not in others, one must distinguish between gas production from "new" wells and production for "old" wells. New wells are those that have begun to produce in the last three to four years. Gas from these wells is increasingly being consumed in the state in which it was produced. Since 1971, total sales of natural gas by producers to *inter*state pipeline companies have declined steadily, while at the same time *intra*state sales of gas have increased rapidly. The price of gas sold in intrastate markets is not regulated by the FPC, and in some producing states, intrastate gas customers are outbidding pipelines for supplies by buying gas at prices considerably higher than FPC currently allows interstate pipelines to pay. The growth of large intrastate markets — especially in Louisiana, Texas and Oklahoma, three states which currently account for over 80 per cent of the nation's natural gas production — is absorbing potential new gas supplies for interstate markets.

The combination of declining production from old wells, declining sales of natural gas to interstate pipelines, and increased intrastate consumption of gas from new wells is preventing interstate pipelines from purchasing adequate supplies of gas. At current regulated wellhead price levels, pipelines cannot obtain enough gas to meet contractual requirements, and they have been forced to curtail gas deliveries to gas distribution companies. Because about 90 per cent of gas sold by interstate pipelines is delivered to distributors, who in turn provide natural gas to ultimate consumers, reported curtailments reflect reductions in supply

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at the wholesale level. Because many pipeline customers have sources of gas supplies other than interstate transmission, pipeline curtailments do not affect consumers as much as the curtailment figures reported by the Federal Power Commission would indicate.

Fortunately, this has been the case in Illinois where recent curtailments reported by the FPC have been the largest in the country. Curtailments by interstate pipelines to utilities in Illinois suddenly jumped from an average of 12.8 BCF per month in the first quarter of 1976, to over 34.1 BCF per month in the third quarter. Total curtailments for the six-month period from April through September alone amounted to 197.7 BCF or nearly one-fifth of total gas sales in Illinois for all of 1975. Yet there have been no severe shortages in the state to date because several Illinois utilities augmented pipeline supplies with substantial quantities of gas that had been stored underground or produced by two large synthetic gas plants.

The supply from underground storage has been extremely important. At the beginning of 1976, Illinois utilities had stored underground reserves of over 376 BCF, which were equal to about 37 per cent of total 1975 gas sales. But the severe winter of 1976-77 has seriously depleted these underground reserves. If

What are the prospects for the next 5 to 10 years in Illinois?

curtailments continue at present rates or increase, gas utilities will have a difficult if not impossible time in restoring underground reserves to pre-winter levels. This leads one to ask: "What is the potential for gas supplies for next winter and for the winter after that? What are the prospects for gas supplies for Illinois consumers for the next 5 to 10 years?" To answer these questions some clear information on all sources of gas supplies is needed.

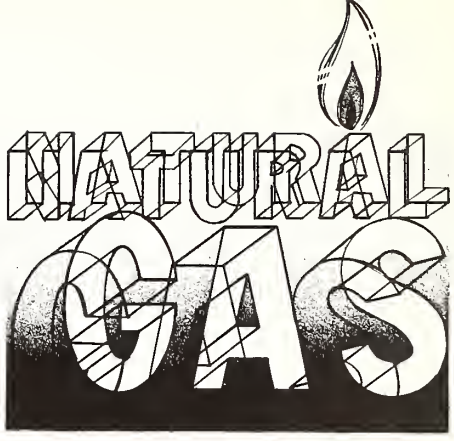
Potential sources of natural gas within Illinois include conventional reserves of natural gas, gas associated with shales and gas trapped in coal seams. For the most part, these sources are considered either too small or too costly to warrant extensive development at this time.

Some gas field development has taken place in Illinois, and in 1975 intrastate natural gas production amounted to only 1.4 BCF or slightly more than 0.1 of one per cent of total gas sales in the state for that year. But while natural gas sources in Illinois may undergo further development in the next 5 to 10 years, it is unlikely that intrastate gas production will increase much over current levels. Illinois must, therefore, continue to rely on interstate shipments of gas to meet the bulk of its needs.

U.S. reserves

Estimated reserves of natural gas in the United States are more than adequate for meeting the nation's needs for several years to come. The difficulty will be in getting that gas out of the ground and to consumers. The American Gas Association's (AGA) most recent estimate of total proved recoverable reserves of natural gas in the United States (including Alaska, and some offshore reserves) is 228,200 BCF. These are quantities of gas that geologic and engineering data demonstrate with reasonable certainty to be recoverable in the future from known oil and gas reservoirs under present economic and operating conditions. This estimate represents about a 10-to-12-year supply for the nation at current rates of natural gas production.

The U.S. Geological Survey (USGS) has made estimates of inferred reserves and undiscovered recoverable resources of gas which, when added to the AGA's estimate of demonstrated reserves, may add another 25 to 40 years of supply at current rates of production. USGS estimated that inferred reserves — quantities of gas which with additional exploration will be added to demonstrated reserves through extensions and revisions of the estimated sizes of known gas reservoirs — will increase proved reserves by 200,000 BCF or 10 more years of supply at current rates of production. In addition, the USGS estimated that there is a 95 per cent probability that another 322,000 BCF of currently undiscovered but economically recoverable gas, will be discovered in the United States, and that there is a five per cent probability that as much as 655,000 BCF of recoverable gas will be discovered. In other words, there



is a 19 in 20 chance that at least the minimum and a 1 in 20 chance that the maximum amounts, respectively, of undiscovered gas will be produced in the United States. This gas is considered recoverable under present economic conditions, and at the present rate of production, these discoveries would add another 15 to 30 years of gas supply.

Exploration and development

In the face of increasing difficulties in purchasing sufficient quantities of gas to meet contractual requirements, many pipelines and their associated distribution company customers have initiated their own exploration and drilling programs. Historically, pipelines dealt solely with gas transmission; gas utilities dealt solely with distribution; and producers, who are primarily the major oil companies, developed new gas supplies. With supplies diminishing, many pipelines and distribution companies are now intending to produce for themselves the gas they can no longer purchase in the market place. With apparent encouragement from the Illinois Commerce Commission (ICC) gas utilities and pipelines that service Illinois have shown considerable foresight in establishing their own drilling and exploration programs. For example, over 20 years ago, Northern Illinois Gas Company, the largest gas utility in Illinois, formed a wholly-owned subsidiary, NI-Gas Supply, Inc., for the purpose of engaging in exploration and development activities. The ICC authorized Northern Illinois to invest a portion of its retained earnings each year in NI-Gas Supply, and that investment program is now paying dividends in the form of gas supplies to Northern Illinois Gas Company customers. As of the end of 1976, NI-Gas Supply had participated in the drilling of 367

successful wells, 92 of which were connected to pipelines servicing the parent company.

A recent sample survey of major pipeline companies showed that in 1976 estimated expenditures for lease acquisition, drilling and development increased by more than 75 per cent over 1975, and these companies plan additional increases in 1977. Of the pipelines which service Illinois, Natural Gas Pipeline Company of America, Panhandle Eastern, Northern Natural Gas Company, and Michigan-Wisconsin Pipeline Company have established exploration and drilling programs and are planning to increase investments in those programs in the next few years. Pipelines are concentrating exploration efforts offshore in the Gulf of Mexico and in the Rocky Mountain states where intrastate gas markets are weak. In both areas there are large tracts of undrilled territory which may enhance — *but cannot insure* — discovery prospects. It must be pointed out, however, that even after discovery, it takes two to five years before gas reaches the consumer. It takes that much time to complete the drilling, to install a gathering system, and to connect the field to an interstate pipeline.

To finance exploration and drilling activities, some pipelines have asked gas distribution companies to enter into advanced payment agreements. Under this kind of agreement, a gas utility makes an advance payment to the pipeline for gas that it expects to receive as a result of the development of a new gas field. If gas is not discovered, the advance is returned making it, in effect, a guaranteed, no-interest loan by the gas utility to the pipeline company. In Illinois, several gas utilities have been making advance payment agreements to supplying pipelines and producers since 1971 when gas shortage problems first became apparent. These agreements must be approved by the Illinois Commerce Commission, which to date has approved all requests. The first agreement of this kind involved Natural Gas Pipeline Company of America and, among others, Northern Illinois Gas Company, People's Gas, Light and Coke Company, and Illinois Power Company and financed a development in the Gulf of Mexico that is now supplying gas to Illinois.

Alaska will also provide a major new source of interstate gas supplies as soon as a gas pipeline to transport gas to the lower 48 states is constructed. Construction has not yet begun which means that deliveries of Alaskan gas will not begin to flow until 1982 or 1983 at the soonest. Yet to be decided is the selection of the pipeline route. One proposed route parallels the Trans Alaskan oil pipeline to the port of Valdez, Alaska, where the gas would be liquified and shipped via tankers to west coast ports. A second proposed route is up the Mackenzie River Valley to Edmonton, Canada, and connection with the Canadian pipeline network which in turn links up with the U.S. pipelines particularly for service to midwestern markets.

Finally, large quantities of imported natural gas from Canada, Mexico and several other countries will flow through interstate pipelines in the next 5 to 10 years. Canadian gas currently accounts for about 7 per cent of total gas sold by producers to U.S. interstate pipelines. U.S. pipeline companies are also planning to import large quantities of liquified natural gas (LNG). LNG import projects whose applications have been approved by FPC would supply 1,350 BCF of gas to U.S. consumers annually by 1981-82. Algeria is expected to be the source of 85 per cent of this supply and Indonesia, the remaining 15 per cent. Projects involving imports of an additional 2,170 BCF annually by 1985 are still in the discussion stage. This gas would come primarily from Iran and the Soviet Union.

Wholesale natural gas prices in the U.S., 1975-1976 (cents per 1,000 cubic feet)

	Average price of gas purchased by interstate pipelines		Average price received by interstate pipelines for gas sales		Average intrastate price
Source	July 1975	July 1976	July 1975	July 1976	April-June 1976
Domestic					
Average	36.7	43.6			
New contract*	56.2-73.6	79.8-101.5			
Canadian	120.8	168.4			
Total average	**41.7**	**53.2**	**84.6**	**101.8**	**158.8**

Source: Federal Power Commission
**Average quarterly prices for first and second quarters.*

Sources of synthetic gas

In addition to natural gas, Illinois utilities will use synthetic or substitute natural gas (SNG) in meeting the needs of their customers in the next 5 to 10 years. SNG can be produced from a variety of feedstocks including light liquid hydrocarbons such as liquid petroleum gas (LPG) and naphtha; heavy liquid hydrocarbons such as residual fuel oil and asphalts; and coal.

Coal gasification has received a great deal of attention in Illinois (see *Illinois Issues*, November 1976). Abundant coal reserves, adequate water supplies, easy access to pipelines and rail transport, and proximity to large markets make the state appear ideal for the development of a coal gasification industry. But the technology for producing pipeline quality gas from Illinois coal will not, in all probability, be available on a commercial basis until the mid-1980's. There are still many complex technical and financial problems which must be overcome before large scale coal gasification plants can be built. Operation of the first of these plants in New Athens has now been pushed back until 1983, and the demonstration phase of that project will not be complete before the mid-1980's. This means that the Coalcon gasification technology will not be implemented on a commercial basis until the early 1990's.

Unlike coal gasification, the technology for producing synthetic natural gas from light, liquid hydrocarbons such as LPG and naphtha is commercially available at the present time. There are now 13 such plants with an installed daily production capacity of 1.307 BCF in operation throughout the country. Two of these plants are in Illinois (one near Morris that has been operated by Northern Illinois Gas Company since 1974 and one near Elwood that has been operated by People's Gas, Light and Coke Company since early 1976) with a combined daily capacity of about .320 BCF. If operated at full capacity on a 335-day per year operating schedule,

these plants can produce over 100 BCF of gas per year or 10 per cent of total gas sales in Illinois for 1975.

The major difficulty with producing SNG from liquids is obtaining sufficient feedstock. As a result of the Arab Oil Embargo, the Federal Energy Administration (FEA) was created and given authority to regulate available supplies of all petroleum products. Under the Emergency Petroleum Allocation Act of 1973, FEA has established mandatory price and allocation regulations for determining the amounts of naphtha and other refined raw materials or feedstock that SNG plants can purchase. These regulations require all plants for which groundbreaking has occurred since May 1, 1974, to apply to FEA for assignment of a feedstock supplier and volume. FEA's policy on allocating petroleum feedstocks for SNG production has been quite restrictive and has effectively limited prospects of increasing gas production from liquids in the near future. In 1974, the agency took the position that SNG manufactured from petroleum products represented an inefficient use of energy resources because of the BTU's lost during the reforming process. Because of this stance, many SNG-from-liquids plants that were in the planning stages, including one large plant which was being planned for construction near Bement, Ill., have now been postponed indefinitely or cancelled. Plans to increase Northern Illinois Gas Company's plant by 50 per cent have also been postponed because of FEA regulations. Because it takes three to four years to construct and test a snythetic plant, it may be several years before even an immediate reversal of policy by FEA results in increased synthetic gas production.

FEA's view of the inefficiency of using petroleum products to produce gas is somewhat ironic for the following reason. Naphtha is primarily an intermediate petroleum product, with 90 per cent of naphtha production being used as blending stock for gasoline. The maximum efficiency with which energy in gasoline is converted to useful work in an automobile is 30 to 35 per cent, but the maximum efficiency with which energy in natural gas is converted into heat is about 80 per cent. Therefore, even allowing for the energy loss of converting naphtha to gas, the net capture of energy in end use with gas for heating is 2 to 2.5 times greater than with gasoline for transportation.

A second difficulty with SNG from liquids is the price. SNG, regardless of the feedstock, is more expensive to produce than natural gas. Gas produced from naphtha, for example, currently costs about 3.5 to 4.0 times the delivered wholesale or city-gate price for natural gas. Furthermore, naphtha costs, which account for over 80 per cent of the cost of producing SNG from naphtha, will remain high because of its competing uses in gasoline and petrochemical production.

The role of price

The price of natural gas will play an important role in determining the extent to which supplies of natural gas will become available in the next 5 to 10 years. As indicated above, for several years FPC kept the wellhead price of natural gas from increasing in a manner that would have stimulated production, a trend which that agency has now begun to reverse.

The table indicates the current structure and trend in natural gas prices in the United States. The average purchase price of gas from domestic producers is considerably below the purchase price of gas in new contracts, of gas sold in intrastate markets, or of gas imported from Canada. As interstate pipelines purchase more of the higher-priced, new contract gas to replace dwindling supplies of lower-priced, old contract gas, the wholesale price of gas will increase as it did from 1975 to 1976. In 1976 the Federal Power Commission increased the rate at which it would allow pipelines to purchase gas that has been developed since 1975 to a maximum of $1.42 per 1,000 cubic feet (MCF). This rate will automatically escalate by four cents per MCF annually. In addition, FPC also increased the maximum rates for gas which began to flow in pipelines in 1973-74 to 93 cents per MCF with an annual escalation of one cent per MCF.

Over the last few years, Congress has considered legislation to eliminate FPC's authority to regulate wellhead prices. One measure, which was passed in the Senate in 1975, specified immediate deregulation of new gas sales from onshore production and deregulation of gas produced offshore beginning in 1981. Similar bills have again been introduced in Congress this session. If adopted, this kind of legislation would cause new contract gas prices to approach the even higher intrastate prices. In response to emergency conditions created by last winter's cold weather, Congress did pass the Natural Gas Emergency Act of 1977. This act in effect deregulates wellhead gas prices temporarily. The law permits interstate pipelines to make emergency purchases of gas at prices above the $1.42 per MCF ceiling until July 31, 1977. The President has the authority to establish prices made under the act, and presidential discretion is expected to keep prices from rising above $2.25 per MCF.

Higher and escalating wellhead prices for natural gas are bound to result in increasing retail gas prices for several years to come, and in all likelihood, increases in wellhead prices will result in even greater than one-to-one increases in the price of gas to consumers. The compressors that move gas through pipelines are also powered by gas. Therefore, an increase in the wellhead price of gas also means an increase in pipeline operating costs which will be passed on to consumers as shown in the table.

Even with complete and immediate deregulation, however, average wellhead prices will not rise up to intrastate levels overnight. Higher wellhead prices for new contracts will be "rolled in" as old contracts expire causing the average gas price to increase slowly. In any year new contract gas supplies from domestic sources comprise only a small fraction of total gas under contract. The full impact of new contract prices will be realized only after the change has been in effect for 5 to 10 years.

Gas users in Illinois and throughout the nation will pay higher prices for gas in the next 5 to 10 years. Higher prices are needed to stimulate exploration and development for new supplies of natural gas. Higher prices will also encourage conservation and switching to other fuels. Natural gas will continue to provide the bulk of Illinois' gas needs in the next 5 to 10 years. Gas shortages will prevail until production for interstate transmission catches up with demand. Supplies will be augmented by LNG imports, SNG production from liquid hydocarbons, and perhaps to a small extent, by coal gasification. All of these alternatives are more expensive than natural gas. □

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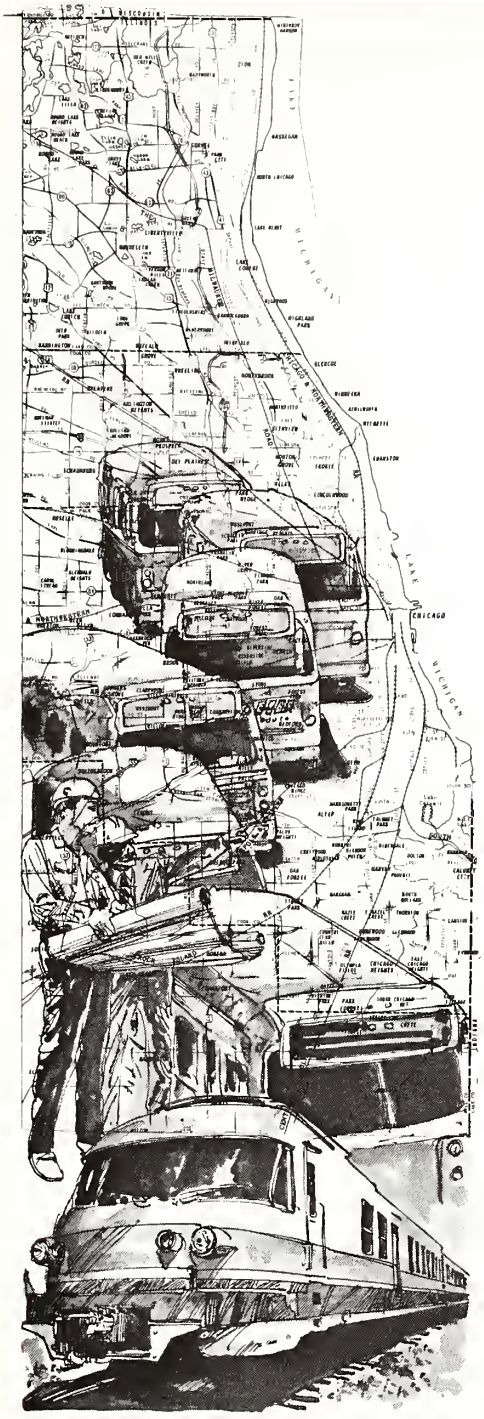
By JOYCE E. KUSTRA



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The RTA chugs on

SPARKS fly almost every time the four suburban board members of the Regional Transportation Authority (RTA) clash with the five Chicago members. The nine members of the RTA's board do not often agree on policy matters relating to mass transportation in its jurisdiction: the six northeastern counties of Cook, Lake, McHenry, DuPage, Kane and Will. The suburbanites cry foul every time the Chicago members call for a vote, but are saved from being defeated on every vote by the majority Chicago members since a two-thirds vote is required for budget approval, taxation and certain other major items such as condemnation of public property.

At a recent board meeting, threats from the suburban minority were heard after the Chicago contingent chose a city-based firm to perform a routine audit. "How many firms outside the city of Chicago have been retained by the RTA to do audits?" one suburban member asked.

The question went unanswered, but the message was clear: the suburbs do not feel that they are well served by the RTA, either in the administration or, more importantly, in the actual services provided by the system. They argue that the Chicago Transit Authority (CTA) is the only company benefiting from the formation of regional transportation service. Chicago members counter that considering the number of people served and the amount of money each area pumps into the RTA, that is not true. The battle goes all the way back to the days when city dwellers first discovered the greener fields of suburbia, only to find that they needed to get back into the city to work. Years have passed and many industries have moved out of Chicago; now central city commuters are finding it just as difficult to get to their jobs in the suburbs. While RTA officials plan toward a comprehensive, complete transportation system, the day when it will become a reality for the entire region is not close at hand. In the meantime, the arguments are hashed over and over again.

One argument not heard as loudly these days is whether a regional system of transportation is even necessary for northeastern Illinois. Except for a few die-hards in the outlying areas of the region, there is general agreement that a regional approach is necessary if mass transportation is to operate successfully in the area. At a recent meeting of McHenry County Republicans, Gov. James R. Thompson hinted that he might support a move for McHenry County to pull out of the RTA, much to the delight of his partisan audience. When angry responses began to pour in, the governor backed down from the statement.

There is also general agreement that mass transportation can no longer operate without government subsidies. The cost of operating expensive equipment in an era of mushrooming fuel prices makes it impossible for any mass transit carrier to break even on the fares it charges its riders. In fact, the CTA, which carries about 2 million of the 2.5 million daily riders in the region, gets one-third of its operating revenue from the RTA. A final argument favoring regional mass transit comes from the energy shortage and the deteriorating environmental condition. It has become essential for a metropolitan area such as northeastern Illinois not only to provide sufficient mass transportation as an alternative to automobile transportation, but also to attract as many riders as possible for the system.

The division between RTA factions has been there ever since the debate over the enabling legislation took place in Springfield back in 1973: how to divide

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revenues and subsidies equitably among the CTA, suburban bus lines and commuter rail lines. At that time, all three were in varying stages of financial strife. Individually, the fragmented transportation lines of the pre-RTA era were in no position to secure the kind of financial aid necessary to keep the transit systems going. Collectively, the transportation companies were able to secure additional funding because of the RTA's jurisdictional umbrella.

Genesis of the RTA

The RTA was established for several reasons. The most important was a consensus among RTA supporters, as stated by Chicago board member Pastora San Juan Cafferty, "Northeastern Illinois is a tightly knit area and the whole area stands or falls together." But several other factors also convinced the RTA proponents that a regional government was the only practical way to reverse the trend of diminishing funds and services. Each year, the General Assembly found itself in the position of considering deficit appropriations to bail out private carriers to keep the trains and buses running. This expensive and time-consuming task was one most of the lawmakers were happy to relinquish. Also, federal funding was contingent on a regional approach to mass transportation, and the federal government required that all six northeastern Illinois counties be included to qualify as an acceptable urbanized region. In northeastern Illinois, the RTA is the only designated recipient of grants from the Urban Mass Transit Administration (UMTA) which disburses federal monies to mass transit agencies.

> The division between RTA factions has been there ever since the debate over the enabling legislation took place in Springfield back in 1973: how to divide revenues and subsidies equitably

In 1971 the state's new Constitution became effective and recognized the need to subsidize transportation; Article XIII states that public transportation "is an essential public purpose for which public funds may be expended." That same year, the CTA was experiencing its first deficit year, so Cook County and the city of Chicago each diverted motor fuel tax funds to keep it going. In early 1971, Republican Gov. Richard B. Ogilvie delivered a "Special Message on Transportation" to the General Assembly in which he urged the lawmakers to approve the Transportation Bond Act allowing the use of bonds for capital improvements for public transportation carriers throughout the state. At the same time, he proposed a regional agency to deal with the huge mass transportation network in northeastern Illinois. After the legislature passed the Transportation Bond Act, Ogilvie in 1972 appointed a task force which considered the regional transportation concept and set forth an outline of what alternate forms the RTA might take.

Although various organizational forms were considered for the RTA — from total control over the lines to merely coordinating the transit systems — the final form chosen was that of an umbrella organization. The most important effect of this decision was that the large CTA organization remained intact to operate in much the same way as before. The RTA act does include a provision, however, which would allow the RTA to become the actual operating agency of the CTA. While Chicago board members drag their feet on this issue, their suburban colleagues keep urging action.

Gov. Dan Walker succeeded Ogilvie in 1973, the year the legislature tackled the job of drawing up the Regional Transportation Act. The session came and went with a thorough airing of the proposed RTA but with no action. It was not until Walker, legislative leaders and representatives of Chicago Mayor Richard J. Daley caucused in November of 1973 that differences were ironed out: the Regional Transportation Act was passed by the ensuing Third Special Session of the legislature and would become effective in December 1973. Meanwhile, short-term stopgap relief had to be provided to keep the wheels rolling in northeastern Illinois. Some observers feel that the several financial crises in transportation were deliberately caused by legislative leaders who held down funding levels in order to bring the RTA to fruition.

Referendum

The RTA enabling legislation called for the controversial act to be put before the voters, even though there were some proponents who felt the referendum was unnecessary and unwise. They felt the highly spirited campaign and election would only polarize opinion on the subject rather than appease dissidents; other RTA backers felt the referendum would help solidify support. The RTA Citizens Committee was formed to sell the idea to the voters, but the committee's efforts were countered by suburban legislators who campaigned against the RTA. The final vote count, listed in table 1, showed overwhelming suburban rejection, but Chicago — the only place where the referendum carried — had such a heavy turnout that its votes pushed the RTA over the top by a mere 13,000-vote margin, and the proposition became law. Court challenges followed, but in the end the vote stood, and regional transportation became a reality for northeastern Illinois.

Table 1

Unofficial vote count on RTA referendum

County	Support	%	Oppose	%
McHenry	2,777	9	27,533	91
Kane	5,865	11	46,187	89
Will	5,995	11	45,298	89
Lake	16,981	25	48,621	75
DuPage	27,224	25	79,821	75
Cook (outside Chicago)	168,949	41	234,788	59
Cook (inside Chicago)	456,475	71	189,039	29
Totals	**684,266**	**50.5**	**671,287**	**49.5**

Provisions of the act

The act stipulates that the RTA coordinate transportation planning in the six-county region and have authority to control public transportation service in the area. The act also specifies RTA as the governmental unit entitled to receive state and federal grants and loans and sets its jurisdiction over 250 communities as well as the city of Chicago. While the RTA does not actually control Chicago's CTA operations (the CTA operates under its own board), it does control CTA's purse

strings to a large extent, providing about one-third of its operating budget.

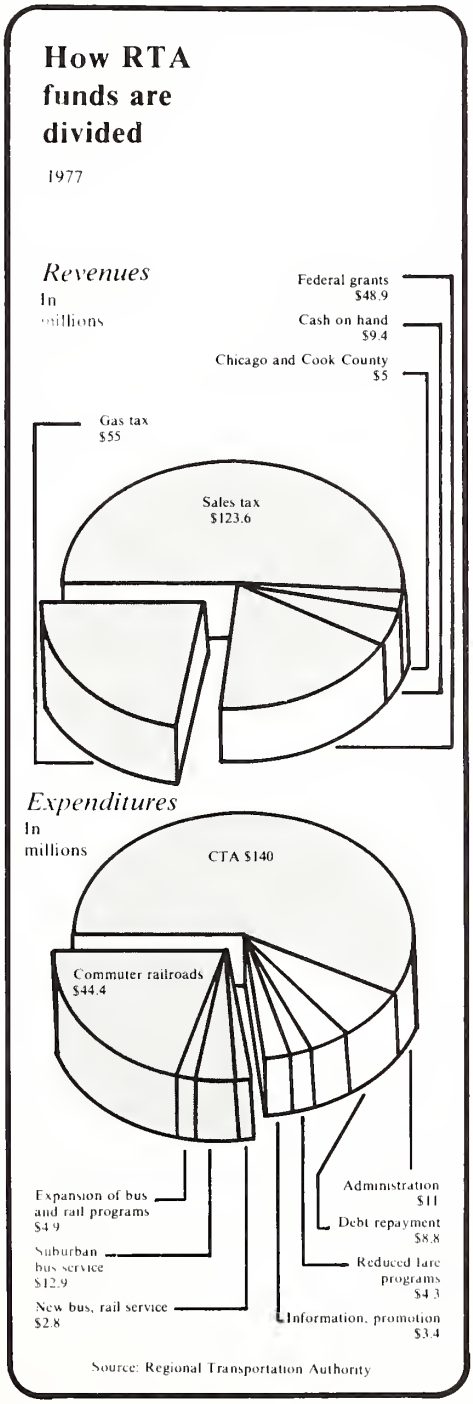
The RTA Board of Directors has often been more controversial than the actual delivery of mass transit services. The act calls for a nine-member board: four appointed by the mayor of Chicago and approved by the City Council; two appointed by the six suburban members of the Cook County Board; two appointed by the chairmen of the five collar county boards; and one, the chairman, chosen by the other eight members. Originally, the chairman also served as chief administrative officer. However, in 1976 Chairman Milton Pikarsky became the chief target of complaints made by suburban directors, who charged he was a poor administrator and that he acted unfairly toward suburban transit lines. They demanded his resignation. The resulting compromise, in which the suburban members won several concessions, also called for the hiring of a chief operating officer, thus diminishing the chairman's power.

Financing the RTA

RTA proponents like to point out that no new taxes were levied to create the RTA; funds were simply diverted from existing revenue sources. But that changed this year. The act originally allowed for revenues to flow into the RTA from the state's Public Transportation Fund. The fund collected its monies from four sources: (1) 3/32 of the state sales tax collected in the six-county region; (2) $14 of each motor vehicle license fee collected in the city of Chicago; (3) a $5 million annual contribution from Chicago and Cook County; (4) federal UMTA funds for both capital improvements and operating purposes.

Before the RTA Board of Directors could pass the fiscal year 1978 budget last spring, they approved a fifth source of revenue, a 5 per cent gasoline tax for the six-county region. The flat 5 per cent tax proposed by Chicago members was chosen over a suburban proposal calling for a differential tax, which would have ranged from possibly no levy at all in outlying McHenry County to the maximum allowed of 5 per cent in Chicago. But, several RTA officials argued that a differential tax would be declared unconstitutional, and the time lapse involved in a court struggle would mean the loss of badly needed funds and possibly create a critical deficit. The Chicago measure prevailed.

Estimated to generate $70 to $80 million a year, the gas tax was seen by Chicago board members as the only solution to the problem of a $55 million deficit in the $237 million budget for fiscal 1978, especially since the General Assembly had rejected an RTA request for authorization to levy a one-cent sales tax. With the exception of one suburban board member, the gas tax measure failed to receive support from suburban members who argued that the new revenues would simply reinforce already existing inequities. Although the gas tax plan calls for the revenue to be returned to the area from which it comes, suburban members are unimpressed and still fear that suburban revenues will end up subsidizing CTA operations.



The lone suburban supporter of the gas tax, Daniel Baldino of Evanston, went along reluctantly after extracting some concessions from the majority, including an extra $5 million for suburban lines and changes in the formula which distributes bond and federal grant money to make distribution more favorable to the suburbs. Baldino also demanded an expiration date for the gas tax of October 1979 so the new tax could be evaluated to see if the RTA commitment to expand suburban service is genuine. A two-thirds majority will be required to extend the tax.

New and expanded services will not be an easy promise to keep. Even with the gas tax, some observers estimate that the agency will face another multimillion dollar deficit by 1980. The five-year plan prepared by the RTA indicates that any deficit might be met by fare increases of about 20 per cent, or 10 cents on bus and rapid transit lines. The plan indicates that fare increases would be "in keeping with a philosophy of sharing the costs of public transportation between the direct user and the general public," but it is a solution which would run counter to the RTA's goal of stabilizing fare levels. The other alternative to avoid a deficit would mean another trip to Springfield to ask for new taxing authorization, perhaps another try for a one-cent sales tax.

The RTA five-year plan is necessarily sketchy and subject to change, but it does show that the RTA's financial woes are far from over. It also raises the question of how new transit lines will ever reach the suburbs in the proportions that are being demanded by commuters and their representatives on the board. Figures indicate that the financial crunch will continue and that new programs will probably be shelved so that existing lines can continue to run. Of the existing lines, studies show that the CTA actually performs much more efficiently than other services in the region. The amount of subsidy per passenger for the CTA is far below that of both commuter railroads and suburban bus lines. However, basing subsidy levels on current ridership naturally

favors established systems at the expense of new systems.

Current budget

Of the $237 million operating budget for fiscal 1978, $198 million goes to subsidize transit lines. New services, mostly in the suburbs, are budgeted for nearly $17 million. The rest is for administration, advertising and debt repayment. About 71 per cent of the subsidies, or $141 million, will go to the CTA, which serves Chicago plus 22 suburban communities and carries over 80 per cent of the region's commuters. The CTA subsidy plus the $57 million subsidy for suburban bus lines and commuter railroads represent a 23 per cent increase over last year's budget. A $304 million capital program is anticipated with most of the funds coming in the form of federal grants. About one-third of this amount will go toward the replacement of 300 CTA rapid transit cars, most of which have long outlasted their expected use. New buses and railroad cars plus maintenance are also included in this capital expenditure. This high cost of maintaining and replacing existing equipment and facilities allows little extra for expansion in the capital program.

Conclusion

In its March 1977 Report (majority) to the General Assembly, the Legislative Advisory Committee to the Regional Transportation Authority listed six areas of progress since the RTA's implementation. The first was area involvement, and the committee reported that the RTA now serves 120 of the 251 municipalities in the region and that includes 83 per cent of the population in the six-county area. The implementation of a standardized fare structure in the region was also noted in the report: whereas fares previously varied widely from one carrier to another, a standard 50-cent fare is now charged for all bus and rapid transit trains in Chicago and most Cook County suburbs while 30 cents has become standard for many smaller local bus systems. A universal transfer system is also being implemented to simplify changing from one system to another. The process of standardizing the more expensive commuter train fares is in progress, with a new zone system to determine a passenger's fare which would result in all lines charging the same fare for the same distance traveled.

The committee also pointed to four more accomplishments of the RTA's formative years: (1) reduced fares for the elderly and handicapped; (2) an around-the-clock Travel Information Center in several languages which was a CTA service taken over by the RTA; (3) service agreements with all seven railroad lines serving the region which assures coordinated transportation delivery; and (4) a major program to replace antiquated equipment.

Chicago's expressways have helped to create the burgeoning suburbs which surround the central city. While the expressway system has provided the mobility necessary for the central city resident to move to suburbia, that development in itself has caused its own set of problems: those same suburbanites must get back to their jobs. In northeastern Illinois, the automobile and the expressways on which the automobile is dependent threaten to

By VICKI GERSON

The London Transport: The world's largest urban passenger system

"I DO believe" stated Kenneth Pope, chief press officer of the London Transport, "that London couldn't exist without its public transportation system."

The London Transport's main network of services extends over an area of approximately 630 square miles with nearly 8 million people living within the region. The London Transport has a fleet of 6,900 buses and more than 4,400 electric railway cars and employs a staff of 60,000. Today there are eight lines encompassing the London Transport's vast underground network. "This is the largest urban passenger undertaking in the world," said Pope.

"The London Transport is not owned by the government," he added. "However, at the beginning of 1970, all overall policy and financial control was taken over by the Greater London Council (GLC).* Our capital debt was written off. Now we report to the GLC. But day to day control is our prerogative."

The London Transport, as are other transportation systems like the Regional Transportation Authority, is plagued with financial woes and needs a government subsidy to exist. The GLC's gross revenue expenditure for the London Transport was 374.0 million pounds which is 23 per cent of the GLC's total budget. However, the London Transport has received less support from the GLC than in previous years. In 1976 the GLC gave 24 per cent of its total budget while in 1975 30 per cent of its total budget was for fare relief. So on July 17, 1977, the London Transport with the approval of the GLC had to raise fares by 15 per cent in order to keep service at its present level.

In the future, apart from cutting operating and maintenance costs and worsening the quantity or quality of the bus and underground services, the London Transport must improve its financial position by seeking more revenue from its passengers, increased support from its taxpayers or increasing tourism which is its largest growth market.

Although Pope is concerned with the financial crisis faced by the London Transport, he said there still are "major projects on the horizon that I'd like to see completed. We are expanding our underground lines because ridership on the tube has been fairly static. The big reduction has been on the bus lines. Ridership has been steadily dropping over the last 20 years in the suburban areas of London."

Yet, the London Transport appears more successful than most American public transportation systems. "One reason, said Pope, "is that we have our faults and we're not afraid to admit them. However, I wouldn't want Americans to believe we're goody-goodies and can set an example to the rest of the world. What we do believe is if you visited London again, service would be a lot better than it is now."

In 1964, by an act of Parliament the Greater London Council came into existence. The GLC is responsible for managing and operating London at a regional government level. It is the overall planning and traffic authority, licensing authority, and has other responsibilities as well.

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But mass transportation must succeed in the Chicago area, as it must in every other metropolitan area. It must be made vailable

suffocate the area with polluted air and to strangle it with massive traffic jams. Urban planners and transportation experts agree that the only way to relieve traffic congestion and insure the economic vitality of the city is to move the automobiles off the expressways and the commuters onto the trains and buses of the RTA.

There are a number of political and economic obstacles, however, that lie in the path of an effective public transportation system for the Chicago area. Disgruntled counties want to pull out, a move that some feel would cripple the whole system. The handicapped cry for facilities which would allow them easier access to mass transit, a laudable goal but one with a high price tag. Commuters can't be convinced to leave their cars at home and take the bus, in spite of a flashy media campaign by the RTA. The nine RTA board members seem to agree on little (one recent argument concerned whether six-year-olds were old enough to travel alone). And worst of all, there's never enough money; mass transit just cannot pay for itself.

But mass transportation must succeed in the Chicago area, as it must in every other metropolitan area. It must be made available to as many people as possible and people must be persuaded to ride. To cut air pollution and save energy, there must be less dependence on the automobile. Mass transit offers the only reasonable alternative.

The RTA has come through its formative years with a few scars but no mortal wounds. But there has been no dramatic increase in ridership since 1974 when the agency began operations, and attracting new commuters remains the number one goal. As the suburbs continue to grow around the political and economic hub of Chicago, a regional transportation plan will become more and more important. The Regional Transportation Authority, created by state law and endorsed by the federal government, is and will continue to be the agency designated to provide that plan.□

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By JOHN REHFUSS and DAVID TOBIAS

Special districts: The little governments providing specialized services

SPECIAL districts mirror very closely the essential character of the American people. They have most of our strengths and weaknesses and represent most of our values, both good and bad. Our national lack of long-range planning and our preference for "ad hoc" arrangements are dramatically illustrated in Illinois by a look at special districts that exist outside the more general governments of municipalities, counties and townships.

Special districts are created to provide specialized services at the grass roots level and, with the exception of some "giants" such as the Chicago Metropolitan Sanitary District, are usually very small and limited in size and scope of their operations. They differ in methods of obtaining revenue, how their governing board members are selected and to which state entity a petition would be filed to form a district. Table 1 shows the number and distribution of the six major types of special districts in Illinois, and table 2 shows their basic characteristics.

Districts are considered "municipal corporations." They can sue and be sued; enter into binding agreements; have their own seal; have perpetual succession; buy, rent or lease land or equipment; hire employees; and usually condemn land for legitimate district purposes. They are, in every respect, little governments. Districts also have limits on their tax rates; these generally can be raised by public referendum (with the exception of conservation districts, which cannot make binding levies or assessments). In most cases, bonded indebtedness can be incurred by referendums, with a maximum set by law.

Table 1

Illinois special districts in 1972 inside and outside Standard Metropolitan Statistical Areas (SMSA's)

Type	Total	Inside SMSA's	Outside SMSA's	% in SMSA's
Fire Protection	705	329	376	47
Park	282	190	92	32
Housing and Urban Renewal	103	29	74	28
Sanitation	128	76	52	59
Natural Resource Drainage (787) Soil Conservation (134)	921	209	712	23
All other	268	140	128	52
Statewide total	**2407**	**973**	**1434**	**40**

Source: Bureau of the Census, 1972 *Census of Governments,* Vol. 1, Government Organization (Washington, D.C. 1973), p. 74.

In very general terms, most Illinois special districts have basic similarities. First, residents who do not wish to be included in a proposed district usually are able to challenge their inclusion either through litigation or petitions to disconnect. This right is usually based on an alleged failure of the district to prove that services are benefiting a resident who usually must prove he is a property taxpayer or is somehow charged for services. Sometimes these challenges prevent the formation of a district. Complaints about inclusion, of course, are strongly related to the amount of taxes levied upon district residents.

Members of district governing bodies rarely receive much remuneration for their services and usually serve for the reward of believing they have made a contribution to a valued end. They are either unpaid or receive a small stipend, with reimbursement for district business expenses.

The relationship between benefits and costs varies greatly. At one extreme, fire protection services are a "pure public good," available to everyone at a uniform levy. At the other extreme, drainage and conservation districts levy charges or benefit assessments directly calculated on the expected benefits. In the case of drainage districts, these benefit assessments are very similar to property taxes and constitute a lien on property in the event of nonpayment.

Most districts represent specialized interests. They have responsibility for a specific function and carry it out with intense dedication. They make good "watchdogs" over general purpose units when their own function is at stake and can be trusted to make a loud public outcry when there is a conflict. Public conflict is infrequent, however, for districts are relatively shielded from public view. Only park districts and drainage districts have elected commissioners — the rest are appointed, usually by county boards, who often follow the advice of existing district board members or reappoint the incumbent. District elections tend to receive little attention, particularly for drainage districts when only benefited property owners vote and often five votes or less settle an election. Districts prefer anonymity because it gives them more flexibility to operate outside the scrutiny that municipalities undergo, and it preserves their preferred financial position.

The DeKalb example

To understand the special districts individually, the DeKalb County example is one place to begin. A typical tax bill received in DeKalb County is shown below. The taxing bodies on the bill include (1) the county, (3-7) the township, (8) the city, (11) the school district, (12) the junior college district,

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and three special districts — (2) forest preserve, (9) sanitary and (10) park. In total the three special districts make up almost 10 per cent of the property tax bill, with the park district clearly taxing the highest of the three.

The DeKalb forest preserve is one of nine in the state (in 1973); all but two (Piatt and DeKalb) of Illinois' forest preserve districts are in metropolitan areas. They are governed by the county board members and usually are coterminous with county boundaries, although they can be smaller. They serve primarily to preserve open space and provide recreational space.

Park and sanitary districts are much more common and more important than other special districts in Illinois. There are about 150 or more sanitary districts in the state, and they have an extraordinary impact on their communities because of the way that they affect land development. Several districts have, over various periods of time, declared moratoriums on sewer connections, which has frustrated the plans of municipalities and/or counties.

The DeKalb Sanitary District has a tax rate (.171) lower than most districts in the state, which ranged from no levy up to .960 in 1973. The low rate is helped by having day-to-day operations financed through a charge included on the city water bill, then remitted to the district for a small handling charge. This revenue permits the use of property tax revenues to retire bonds, with the balance of operating revenues coming from an acreage charge for annexations as well as miscellaneous revenues including charges for using or connecting to sewers.

DeKalb is a medium sized sanitary district, originally larger than the city, but now roughly coterminous. About half its sewer mileage is owned and maintained by the City of DeKalb, which will presumably turn it over when it is upgraded with community development funds. Complex cooperative arrangements like these are relatively common between sanitary districts and municipalities.

Land development is a constant factor in the calculations and activities of the district. One large shopping center north of DeKalb built its own treatment plant instead of hooking onto the district and created a situation which has been controversial ever since. Another dispute was with Northern Illinois University in 1965, when university growth led the district to declare a moratorium on sewer connections. The stalemate was resolved only when the university agreed to help cover the costs of new facilities. Most disputes have been with developers rather than with other government bodies.

District board members were selected by the circuit court judge until 1973, when legislation implementing the new Constitution gave appointive power to the county board of supervisors. Generally, very influential members of the community have been selected as sanitary district board members. In DeKalb, members include the president of one of the major banks in the city (who has been on the board for 15 years), a downtown merchant and a welding contractor.

1975 Tax Bill
DeKalb County

Taxing body	*Rate*	*Amount*
1. County	.620	$ 138.98
2. Forest Preserve	.018	3.92
3. DeKalb Township	.137	29.82
4. DeKalb Road & Bridge	.120	26.12
5. DeKalb Special Bridge	.000	.00
6. DeKalb Special Gravel	.150	32.65
7. DeKalb Equipment & Bldg.	.011	2.39
8. DeKalb Corp.	1.070	232.91
9. DeKalb County Sanitary Dist.	.171	37.22
10. DeKalb Corp. Park	.466	101.43
11. School District 428	4.084	888.96
12. Junior College District 523	.232	50.50
Totals	7.079	$1,540.90

Virtually coterminous with the city, DeKalb Park District is by far the largest of the six park districts in the county, although it is not large in comparison to districts across the state, particularly in the Chicago area. It enjoys an excellent relationship with the school district. As is common, school facilities are used for park district activities in both winter and summer. The district has paid for installation of lights on school tennis courts and built a $100,000 heating plant for one gym where joint programs are carried on. The major park district programs, including swimming, are conducted in the summer. A recent park district bond referendum paid to upgrade the existing pool to olympic size and to make other improvements.

Park commissioners in DeKalb are chosen in April about the time of the school board elections. There is substantial competition for the posts, although candidates generally do not represent the "elite" of the community. Rather, they are people who have been active in recreational or park activities.

Illinois has about 40 per cent of all the park districts in the United States. The approximate 300 Illinois park districts are distributed among 70 of the state's 102 counties. They were originally created to avoid municipal tax limits and to provide more generously for park and recreation services, although this advantage is no longer a factor in home rule cities since the 1970 Constitution.

Park districts have very complex boundaries often covering many other jurisdictions. Many are "defensive" governmental units which were created to protect the original residents, especially in rural areas, from being subject to larger districts with higher service levels and taxes.

Park districts and municipalities often have disputes over policies. A common disagreement is over police patrol of parks. Although districts may hire rangers, many smaller districts prefer to ask the municipality to patrol. Aside from out-of-pocket costs, municipal police patrol of parks is a problem

Table 2
Major Special Districts in Illinois

	Park	Sanitation	Fire	Drainage	Soil & Water	Housing
Property tax power	Yes	Yes	Yes	No	No	No
Other source of income	No	No	No	Yes	Yes	Yes
Bonded debt	Yes	Yes	Yes	No	No	Yes
Created by petition to:	Circuit court	Circuit court	Circuit court	Circuit court	State Dept. of Agriculture	State Housing Board
Number of trustees	5	3	3	3	5	5
Elected	Yes	No	No	Yes	Yes	No
Appointed by county board	No	Yes	Yes	No	No	Yes
Competition for board	Usually in larger districts	N/A	N/A	Rarely	Occasionally	N/A
Overlapping with other local units	Often	Often	Often	Sometimes*	Insignificant	Usually in a municipality

**Including overlapping other drainage districts*

when only part of the park is in the city, and the police regard the extra patrol as a benefit to nonresidents of the city.

Another potentially controversial area involves municipal zoning and building controls. Some districts insist that as sovereign units they have the power to adopt their own construction codes for pools or maintenance buildings and that municipal zoning does not apply to park and playground sites. This is rather an explosive issue, since few municipalities are about to give up their building/zoning prerogatives.

A subtler issue that often pits park districts against municipal councils involves priorities. Governed by advocates for sports or open space, the districts tend to resent any subordination of park or recreation functions to a set of municipal priorities.

Besides park and sanitary districts, the four other most common types of special districts are housing, fire protection, drainage and soil and water conservation. Some levy taxes directly; others are funded from general county, state or federal revenues.

Fire protection districts

The 1927 act (*Illinois Revised Statutes,* 1975, Chapter 127½, sections 21 et al) enabling special fire districts to be created in the state allows areas outside a city to contract as a district with a municipality for fire protection services. The fire protection district can also buy its own equipment (on the installment plan or by issuing bonds) and provide services directly to the district's residents.

Smaller districts may maintain limited facilities and a volunteer force but depend upon mutual aid agreements in the event of an excessive demand upon their resources because of large fires or many fires at once. District trustees are usually long-tenured and may also be members of other local special district boards. Presently, all the land in DeKalb County is contained within one of 19 fire districts, a number of which cross county lines. In the state, there are over 700 fire protection districts. These have proliferated in recent years as areas attempt to avoid annexation by municipalities which provide fire protection. DeKalb's fire protection district was created in 1967 as a response to the tactics of surrounding communities trying to expand their tax bases. (The attempt by Sycamore's fire district to expand southward in 1963 was thwarted because the district tried to include property owned by the president of the DeKalb community fire association, an influential figure in local politics.)

One of the results of this "defensive" method of creating boundaries has been the somewhat unequal distribution of services. Boundaries are not determined by efficiency criteria, such as the distance from the fire station, although expansion of a district may influence the location of additional stations. Illinois lacks county coordinating offices for fire protection, which may be needed to allocate resources more rationally.

Drainage districts

Drainage districts are the most numerous in DeKalb County, but of the 33 districts listed in court records, only 14 can be classified as even minimally active. Many were formed around the turn of the century under the original 1879 statutes which provided for drainage districts based on a system of assessments which permitted districts to include only lands benefited. They were formed to deal with inadequacies of the common laws of natural drainage and to give landowners a means of securing proper drainage. The most recent revision of the drainage code, effective in 1956, has not changed the basic assumptions or ways of operation.

DeKalb's typical active district has an annual assessment of about $4,000 for legal fees and minor maintenance operations. The commissioners are long-tenured and are elected with minimal voter participation. Unlike other special districts, drainage districts may

Table 3

Special districts in Illinois and the Chicago area, 1973, with property tax power

County	Park	Fire	Sanitation	Library	Mosquito Abatement	Other*	Total
Cook	93	45	32	22	4	6	202
DuPage	34	35	11	7	5	9	101
Lake	17	20	8	8	2	1	56
Will	16	23	4	6	1	5	55
Kane	9	24	3	--	--	2	38
McHenry	6	18	2	5	--	2	33
Total	**175**	**165**	**60**	**48**	**12**	**25**	**485**
Total in other 96 counties	**121**	**559**	**94**	**15**	**8**	**123**	**920**
State Total	**296**	**724**	**154**	**63**	**20**	**148**	**1405**

**Includes 26 hospital districts, 25 airport authorities, 24 street lighting districts, 14 cemetery districts and a number of natural resource districts.*

Source: Illinois Department of Local Government, *Illinois Property Tax Statistics 1973* (Springfield 1975), p. 1.

Note: State figures are not consistent with the Census Bureau so exact comparisons are not possible.

and do overlap but may not share boundaries with any other governmental unit. In DeKalb, they range in size from 700 to 7,800 acres.

On occasion, districts have become embroiled in extended litigation over alleged benefits or damages. Heavy legal fees are about the only outcome of such litigation. There has been renewed activity in recent years because of the deterioration of the old tile lines, and new commissioners have been appointed to conduct surveys.

Soil and water conservation

Soil and water conservation districts are usually organized along county lines.They have no taxing powers as such and provide free technical assistance to participating landowners who must, however, pay for any improvements made upon their property. Subdistricts, established for flood control, may levy a property tax and other assessments for construction, operation and maintenance of flood control structures. Operating funds for districts come from the county, the state, the local farm bureau and other miscellaneous sources. DeKalb's soil and water conservation district budget for fiscal year 1975 was only $14,565.

The district relies greatly upon federal technical assistance from the U.S. Soil Conservation Service (SCS) and cooperates with numerous other federal and state agencies. However, the SCS acts only in an advisory capacity; the district board of directors actually sets priorities for the federal technicians. The district attempts to induce landowners to sign up as voluntary "cooperators" in order to establish their eligibility for free technical assistance.

District directors are elected at the annual meeting in the winter for two-year terms. They are responsible for establishing policies, priorities and the budget. They appoint associate directors for one-year terms to serve on various committees. The associate directors have served as a source of replacement for directors in the past. Directors in the DeKalb district have included a park ranger, numerous farmers, a landfill owner, a specialist in farm management and a former county planner.

The DeKalb district officially includes all the land within the county except for the municipalities incorporated at the time of its creation in 1946. All petitions for zoning variances in the district must be examined and evaluated at the petitioner's expense before being ruled upon by the particular zoning board. While this has potential for land use control, the soil conservation district must rely upon the appropriate government for enforcement, since the district does not have enforcement powers. Presently, only the City of DeKalb and the county have agreed to cooperate in this matter.

Table 4

Selected examples of very large and very small special districts in Illinois, 1972

Large Districts	Revenues (thousands)	Expenditures (inc. cap. outlay)	Debt
Chicago Park District	$67,474	$79,870	$109,875
Metropolitan Sanitary District of Greater Chicago	68,291	83,759	134,400
Edwards Hospital (DuPage)	3,918	5,099	3,867
Hinsdale Sanitary (DuPage)	3,844	4,566	5,825
Illini Hospital (Rock Island)	3,897	3,791	4,040
Small Districts	**Property Tax Receipts**	**Tax Rate**	**District Assessed Valuation**
Normandale Fire (Tazewell)	$2,438	$.125	$1,951,000
North Arlington Fire (Cook)	520	.126	412,000
Casey Fork Park (Jefferson)	1,485	.100	1,485,000
Hooppole Library (Henry)	536	.015	3,571,000
Wolf Mandel Sanitary (Cook)	1,885	.250	754,000
Shannon Cemetery (Carroll)	1,463	.030	4,876,000

Sources: For Large Districts, Bureau of the Census, *1972 Census of Governments Vol. 4, Government Finances, No. 2, Finances of Special Districts* (Washington, D.C.: 1974) pp. 69-70. For Small Districts, same as Table 2.

Housing

Housing authorities in Illinois were created by legislation passed in 1934, enabling municipalities, counties or incorporated townships to address the problem of unsafe, unsanitary or insufficient housing. Housing authorities can be created by resolution of the municipal, county or township governing body, petition of 1 per cent of the residents, or by an order from the State Housing Board (SHB). There is a strong statutory connection between the local authorities and the state, because the SHB must approve the creation of such authorities as well as the appointments of commissioners made by the presiding officer of the appropriate governing body (township, municipality or county). The state must also approve any expenditures in excess of $2,500.

As a municipal corporation, a housing authority can issue bonds to finance construction projects. But, it does not have any taxing powers. The general public pays for housing authorities indirectly through general state and federal revenues. While each authority can legally set its own income eligibility requirements for tenants, other criteria may be required to qualify for funds from the state or federal governments. Operating revenues, including payments to local governments for services (which can be negotiated but cannot exceed normal property taxes) are raised through rent paid by tenants.

DeKalb's County Housing Authority maintains three sites and is building a fourth. The present capacity is 225 units in two locations for the elderly (62 years and over) or disabled residents, and 26 units in a third location for families with children. Two of the present five commissioners are realtors; the third is a bank officer. Data on occupations of the other two was not available.

The fiscal impact

Illinois special districts have a substantial impact on the local government sector. In 1973, 10.5 per cent of *all* property taxes levied were by special districts, and nearly half of that was by park districts. The share of total local spending is even greater (11.5 per cent) when one counts other revenues. Table 2 indicates that district spending tends to be concentrated in specific functional areas, such as parks and sewerage, and is a very substantial portion of the total spending. Nearly 80 per cent of local

spending for housing and parks is made by special districts. Most of these totals come from the very large districts. There were 44 districts in Illinois in 1971-72 with revenues or expenditures over $1.5 million or debt over $10 million. These "giant" districts made up about 80 per cent of total district revenue and indebtedness. Table 3 contrasts finances of very large and very small districts. Illinois, with the most special districts in the nation, ranks fifth in the number of large districts and second in total revenue among the 50 states. Only five other states, Nebraska, Washington, Georgia, Pennsylvania and Arizona, spend a higher percentage than the Illinois total of 11.5 per cent as a share of total local spending. Once one leaves the "giant" districts, the fiscal impact begins to fall off rather quickly.

If one is to believe their detractors, special districts in Illinois are increasing at a never-ending pace. In the 10 years prior to 1972, a total of 281 districts were created. However, this is only a 13 per cent growth compared to the national figure of 29 per cent during the same period. Furthermore, although Illinois districts spend a good deal of local money, the total share of local expeditures dropped from 15 to 11.5 per cent during the same 10 years. Park and sanitary districts, which primarily serve fringe or urban areas, are on the increase, while rural districts such as drainage or soil and water conservation are decreasing in number.

Why districts exist

Why do special districts survive and multiply? A major reason is that they have more flexibility to meet geographic problems. A drainage or sewage district has to meet natural topographic features, and political boundaries are highly irrelevant to service needs. To provide this service, these special districts must be created to overlap boundaries of municipalities and counties since the county or municipality cannot vary its tax rate to meet geographic needs. Although the 1970 Illinois Constitution permits varying tax rates for special service regions in counties, this has had little affect on existing districts since counties have not done much with their new authority.

Historically, state limitations on local property tax levies have resulted in attempts by local interests or local governments to "spin off" a function such as parks from the general purpose unit. The resulting special district has its own tax level which is not charged to the preexisting unit. "Spinning off" is also a way for municipalities to avoid the onus of tax increases.

Citizens or special interests not in a municipality may need a special kind of service but do not want the full range of municipal services they would receive by annexation to a nearby city. Sometimes those served by a special district do not want to see the specific function of the district swallowed up by a larger unit, where it might not get the "loving care" that is possible from a separately selected board for a special district.

Although it is often charged that small districts are too small to be

efficient, some empirical studies have shown that citizen satisfaction is higher with smaller units and that the smaller units have lower per unit costs than nearby cities. This is because the units tend to hire lower paid employees, primarily because a lower level of service is required. The efficiency argument also overlooks the wide range of cooperative arrangements that exist. Many, if not most, park districts have joint purchasing agreements with municipalities or other districts and often share equipment. Fire protection districts have mutual aid arrangements and often exist only as separate taxing units staffed by volunteers.

Another charge is that special districts are particularly vulnerable to domination by a single interest group or even a single family. Sometimes the chief beneficiaries of small districts are lawyers, engineers and suppliers of materials. Yet the opportunity for citizens to become more active and stop such abuses is open. They can take the trouble to vote in special district elections, or — if the special district officer is appointed by the county board — can make their power felt by the board on election day. (Before the 1970 Constitution, officers of special districts were appointed by the judiciary; this was prohibited by Article VII, section 8.) More people have an opportunity to participate in a system with many small districts than would be possible in a more centralized system.

Improving special districts

There should be better financial reporting and public information on the activities of districts. This criticism is not limited to special districts; many small municipalities have virtually nonexistent records — financial or otherwise. The county treasurer could serve as district treasurer and chief financial officer for most districts, investing monies through a pool. This is already required for drainage districts. The treasurer or someone else could assure that each district publishes a financial report.

Local boundary agencies are needed, particularly in urban and fringe counties, to allocate responsibilities and boundaries among local units. Patterned after models in California, Oregon and Minnesota, these agencies should be made up of local officials within the county — either elected or appointed *ex officio*. Their power — subject, of course, to a vote by the citizens — would include approving or denying incorporations of new units; approving annexations to any unit and ordering the creation of county taxing areas in lieu of district formation. By keeping the agency locally selected, the tendency for local units to run to Springfield for guidance might be reduced.

One should not necessarily expect high levels of voter participation in special districts, but better publicity and required open reports might encourage more citizens to be active. Districts should be required to appoint formal citizens advisory committees to publish and disseminate annual reports and audits. Citizens should not be allowed to serve on more than one board. Greater citizen involvement in special districts would solve many of the problems and emphasize the strengths of this peculiarly American system.□

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By DENNIS W. and JEAN H. HOSTETLER

Guidelines to solve property tax problems prove inadequate in Illinois

Property tax system warrants reform

ABOUT every ten years, the inequities of the property tax and the notoriously poor quality of its administration surface in the public consciousness. This is followed by mutterings of taxpayer revolts, which, in turn, generate legislative studies and debates and, occasionally, tax reform legislation. Inevitably, however, this transitory period of concern is succeeded by a return to neglect and inequity. The property tax burden in Illinois is now more than $300 per capita, up from $244 per capita in 1970.

The reform efforts in Illinois, as in other states, have roughly followed the blueprint laid down by the prestigious federal Advisory Commission on Intergovernmental Relations in its 1963 report, "The Role of the States in Strengthening the Property Tax." Four reform areas were outlined: (1) professionalizing the assessment process; (2) making it easier for the taxpayer to understand the system; (3) setting a realistic statewide assessment standard, and (4) establishing a strong state agency to enforce and implement the reforms. The state of Illinois has attempted to make reforms in each of the four areas.

Professionalization

The establishment of the office of the county supervisor of assessments was an attempt to professionalize the assessment process. Until 1970, counties could choose to have a supervisor of assessments or could allow the county treasurer to assume assessment duties on top of his other tasks. After 1970, however, each county was required to have a separate county assessor or supervisor of assessments (except St. Clair County which has an elected board of assessors).

Supervisors of assessments, one-half of whose salary is paid by the state, must pass a state-administered examination to be appointed. They have the job of supervising, coordinating and supplementing the work of the elected township assessors. Their powers have gradually been increased by allowing the county to levy separate funds (without referendum) for the support of this office and for the provision of assessment tools such as tax maps and property record cards which individual townships frequently cannot afford. Also, in 1977, the General Assembly in P.A. 80-602 transferred authority to set up property index numbering systems from the county treasurer to the county supervisor of assessments.

The second way in which Illinois has promoted professionalization is by providing incentives for local assessing officials to seek professional training. Under an earlier program, any assessing official could receive $300 a year from the state by earning the designation of "Certified Illinois Assessing Officer" (CIAO). This required attending a three-day basic course and a three-to-five-day advanced course and passing an examination.

Legislation passed by the General Assembly in 1977 (P.A. 80-589) increased the requirements for receiving the stipend. In addition to the CIAO designation, the law requires 60 hours of course work before a stipend will be granted. And, in order to continue receiving the stipend, the assessing official must take 120 more hours of course work within four years.

Informing the public

Public understanding of the property tax system has always been poor. Many taxpayers become concerned about the equity of their assessment only after they have received their tax bill. When they go down to the county courthouse or to their township assessor to complain, they find out that the opportunity to appeal has already passed. Appeals must be made before tax bills are mailed.

In 1977, the General Assembly acted to make the taxpayer's job easier. H.B. 2198 (P.A. 80-421) opened to the public the annual meeting between the supervisor of assessments and the township assessors at which assessment policy is set. A second piece of legislation, H.B. 2199 (P.A. 80-614), increased the amount of information a taxpayer receives on his assessment notice. The taxpayer is now informed about the assessor's judgment as to the market value of his property as well as the assessed value, the relationship between the assessed value and the tax bill, and the procedures and time limits for appealing assessments.

Statewide assessment standard

The Illinois Constitution requires that all property be assessed uniformly. The legislature, however, may choose the percentage of market value which will be the statewide standard. Enforcement of the statutory standard has been difficult.

Until 1975 when the Illinois Supreme

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Court ordered the state to enforce the statewide assessment level by issuing realistic multipliers, actual assessment levels had always lagged behind the statutory requirement. In the 1960's the statewide standard was 100 per cent of market value. By 1971 the discrepancy between actual levels and the statutory requirement was so glaring that the legislature was forced to lower the standard to 50 per cent of market value, thus legitimizing the assessors' failure to follow the old law. When the Supreme Court acted in 1975 in the case of *Homer* v. *Lehnhausen,* actual assessment levels had further eroded and the legislature again lowered the requirement to 33 1/3 per cent of market value to forestall massive assessment increases in most of the state.

By 1976 there was talk of lowering the statutory level to 25 per cent of market value. This was not done. In 1977, however, farm property was, in effect, exempted from the 33 1/3 per cent requirement by P.A. 80-247 which allows farmland to be assessed on the basis of the value of crops produced instead of market value.

State supervision

Gradually, the state has increased its supervisory authority over property tax administration. The state has the power, when it cares to exercise it, to raise or lower assessments by the use of county multipliers. It can also order reassessments. The state administers qualifying examinations for supervisors of assessments and for board of review members in counties over 100,000 in population. The courses which will qualify a local assessing official to receive a state stipend must be approved by the state. In addition, the state has assumed a more active role in assessment administration by conducting its own training programs and by providing direct technical assistance to local officials.

Illinois has used various agencies to supervise property tax administration. From 1943 until 1969 supervision was performed by the Property Tax Division of the Department of Revenue. In 1969, the property tax function was moved to the newly created Department of Local Government Affairs (DLGA). Dissatisfied with the DLGA's performance, a legislative subcommittee recommended in 1975 the establishment of an independent tax commission. The recommendation, which was not accepted, would have brought Illinois back to the sort of commission the state used from 1919 until 1943.

Misdirected reform

Although the legislative changes seem to indicate that Illinois has made significant progress toward property tax reform, the effect on actual assessment practices has been slight. In a few areas of the state good quality assessment is being performed, but in most counties inequities continue. Some local assessing officials refuse to voluntarily comply with the statutory 33 1/3 per cent assessment level. In 1975 one county had an average assessment level (before application of the state multiplier) as low as 3 1/3 per cent of market value. Five counties had assessment levels before the state multiplier of less than 10 per cent of market value.

Opening up the property tax system is a favored strategy of reformers who assume that an informed public will be able to demand changes

Not only is voluntary compliance with the statutory assessment level poor, but assessments are also very uneven within counties and townships. The coefficient of dispersion is the statistic used to measure the variation of individual assessments around the average assessment level. In 1975, 28 counties had coefficients of dispersion for urban assessments higher than 50 per cent.

If the county's average assessment level was 33 1/3 per cent of market value, a coefficient of dispersion as high as 50 per cent means that properties with a market value of $50,000 are as likely to be assessed at $25,000 or at $8,000 as at the correct assessment of $16,700. In other words, a property chosen at random is likely to be assessed 50 per cent above or below what it should be. Although the average taxpayer does not realize the seriousness of the situation, inequities of this magnitude are not uncommon.

Part of the problem, of course has been the rapid inflation of real estate values. But the primary reason that reform efforts have failed is the basic incompatibility of the perspectives and goals of the reformers and those of the central actors in the property tax process.

In the area of professionalization, for example, the reformers assume that assessing officials *want* to conduct the frequent reassessments so vital to an equitable system. The reformers believe that only ignorance and lack of the proper tools stand in their way. In actuality, assessing officials are not eager to conduct more frequent valuations and so remove inequities. Doing this would mean raising the taxes of citizens who have been underassessed in the past. These citizens can be quite vocal in their disapproval while those who benefit from such reevaluation will rarely rise to support the assessor. Since township assessors are elected, they tend to be quite responsive to public disapproval. Supervisors of assessments are equally sensitive, since the county board members who hire and fire the supervisor must also face the wrath of angry taxpayers. The long and short of the problem is that teaching assessors how to do a good job of valuation is not enough. Whether the system can be changed to provide rewards and incentives for doing a good job is another question.

Opening up the property tax system is a favored strategy of reformers who assume that an informed public will be able to demand and enforce changes in the system. Unfortunately, the average taxpayer's attention span is limited. When increases in tax bills are particularly dramatic or when gross inequities are unearthed by the media, there is a brief flurry of protest which rather quickly subsides.

Taxpayer's action

The taxpayer's action, or lack of it, is understandable. In the first place, the property tax system is horribly complex (see *Illinois Issues,* October 1977). The two-year period from assessment to collection and the division of responsibility among township assessors, various county officials, the state and a large number of local taxing districts leaves many taxpayers understandably bewildered. In the second place, average

single-family homeowners have too little at stake to sustain an active interest in reform. The prospect of saving $50 or $100 in taxes is not enough to make most of them take on the lobbying effort which genuine reform demands. Taxpayers whose stake in the tax system is larger — farmers and businessmen — are much better organized and have more influence in property tax administration than the average residential property owner who has no permanent interest group to speak solely for him. This imbalance of interest group pressure favors inequity rather than reform.

The conflict over a statewide assessment level is another area where the goals of reformers and practicing assessing officials collide. Reformers point out that state aid programs such as school aid, which include assessed valuations as part of a distribution formula, require a uniform assessment level to operate fairly. If uniformity is not enforced, districts which systematically underassess property would look artificially "poor" and would receive extra state aid while districts which keep assessments up-to-date would appear wealthier and would be penalized by receiving less state aid.

Reformers also note that uniformity is necessary because taxing districts frequently include more than one assessment district. In such cases a lack of uniformity in assessment levels means that residents in the more lowly assessed area would pay relatively less for the taxing district's services than residents of the more highly assessed area.

Although the assessor might recognize the theoretical desirability of uniformity, he has little incentive to raise assessments in his own jurisdiction. To do so would upset taxpayers, lose state aid for local school districts and require residents of overlapping districts to pay a larger share of the taxes supporting that district. On the other hand, if the assessor can get away with assessing below the statewide standard, he benefits local taxpayers and school districts.

Local assessors are also aware that the easiest way to stay in office is to keep assessments as stable as possible. Frequent reassessments are not only a lot of work, they can also lead to a short term in office.

Another more subtle reason local assessors resist adhering to a rigid statewide standard is distrust of the assessment-to-sales-price ratio studies whch are used to measure compliance with the statutory 33 1/3 per cent assessment level. They feel that their own judgment as to the value of property is more accurate than the whims of the buyers and sellers who make up the real estate market in any given year.

The trend toward strengthening the state's power to supervise property tax administration is based on the assumption that the state will be insulated against the pressures that bear on local assessing officials. Illinois' experience does not support this assumption. State officials are as sensitive to irate taxpayers as are local officials. The state's most effective tools have not been used for fear of arousing the anger of taxpayers or of local governmental officials who resent intrusions into their territory. Despite horrendous assessment inequities in some counties, the power to order a reassessment has not been used in recent times. Finally, the state's power to equalize assessment levels across counties is not used until a crisis or judicial intervention forces action. As responsibility over property tax administration has been transferred to the state, the political pressures causing inequities have followed.

Any hope for the future?

The standard solutions to the problems of the property tax — professionalization of assessors, opening up the system, a rigid statewide assessment level and more state control — are not likely to work. They have not been successful in the past in improving the overall quality of assessments and they have not worked in other states.

Is there any alternative to the familiar pattern of isolated islands of reform surrounded by a swamp of inequity? Based on experiences in other states, there are several paths Illinois could follow. The judiciary could clean up the system by enforcing the constitutional requirement of uniformity. Alternatively, the legislature might decide that realism is the best policy and take unenforceable statutes off the books, giving local assessors more autonomy. A third choice might be a shift from the property tax to other means of funding local governmental activities. The response to the current crisis may indicate which path Illinois will follow.□

FIRST OF A TWO-PART ARTICLE By LAWRENCE N. HANSEN

Reprinted from *Illinois Issues,* January 1978

SPECIAL FEATURE

The Daley Legacy

Many of the most objective observers of Mayor Daley and the machine he controlled for over 20 years are outsiders. Since most of the insiders aren't talking, the task of assessing Richard J. Daley's influence and achievements will be long and controversial — and political, just as the Mayor would have wanted it. But a good start was made at a recent conference sponsored by the Department of History of the University of Illinois at Chicago Circle and the Chicago Historical Society. With grant assistance from the Illinois Humanities Council, Dr. Melvin G. Holli, conference director, assembled forty-odd journalists, academics, city officials and neighborhood leaders to present their views on the late mayor and his city at a four-day conference, October 11-14, 1977, entitled "Richard J. Daley's Chicago." Excerpts from two of the papers presented at the conference are published here with the permission of the authors and the university. Professors Holli and Peter d'A. Jones are editing the proceedings for publication in book form.

Mayor Daley and the suburbs

LAWRENCE N. HANSEN
Special assistant to Sen. Adlai Stevenson, he is a graduate of the University of Illinois.

IT IS my own judgment that Mayor Richard J. Daley never actively competed for the affection of the suburbs, because it was a contest he could not and did not need to win. He rarely considered the suburbs a factor in his political equations, because for most of his life the suburbs were politically impotent. And he never consciously sacrificed the interests of Chicago or its Democratic organization in favor of larger, conflicting interests because there were virtually no interests more important than those of the city and the political organization he led.

The late mayor's views about the suburbs were shaped by certain conditions during the first half of his 50-year political career, and though conditions changed, his views remained largely fixed and immutable until the end. In the last 25 years of Daley's political stewardship, a preoccupation with broadening and consolidating his base of power in Chicago hopelessly blinded him to the demographic and political revolution that was unfolding in the quiet villages on the city's periphery and on the vast, once sparsely populated spreads of farmland beyond.

In 1946 Daley voluntarily gave up a secure seat in the state Senate, and instead he sought and was slated for the post of Cook County sheriff. He lost the election to a relatively unknown Republican, Elmer Michael Walsh. Daley's 51 per cent share of the Chicago vote was simply insufficient to offset Walsh's 115,000-vote plurality in the townships. The disappointment and humiliation of defeat gave Richard Daley time to think about his future and the condition of his party. If his political career was endangered, Daley also recognized that the enemy within — those pronounced pockets of Republican resistance within Chicago itself — was largely responsible for his dismal performance. The suburbs were a problem that eventually would have to be dealt with, but the first order of business was to begin cleansing Chicago of its Republican influences.

Winning with city votes

After a brief interlude as Gov. Adlai E. Stevenson's state director of revenue, Daley returned to the political hustings in 1950 as a candidate for Cook County clerk. He won this time by a comfortable margin and in 1954 was reelected overwhelmingly. In both of these contests, the outcomes were determined wholly by the city's voters.

Unlike 1946, Daley's Chicago pluralities in these two elections were larger than his and his opponent's combined vote in the townships. The suburbs had not been decisive, not even remotely relevant to the outcomes of these contests, and they never would be, Daley reasoned, so long as the city

Democratic organization did what it had to do. That was the vital lesson of 1946, and I suspect Daley privately vowed he would never forget it.

In July 1953, Richard J. Daley inherited the house built by Tony Cermak, Ed Kelly, Patrick Nash and Jake Arvey; he was elected chairman of the Cook County Democratic organization. As party chairman and county clerk, he could not have been unaware of the massive outmigration of people from Chicago to the suburbs — a movement which had commenced in the 1950's, accelerated in the 1960's and continues to this day. For the first time since its incorporation, Chicago had lost population. There was no visible sign of concern or alarm by Daley about the demographic transformation that was rapidly unfolding in the metropolitan region. In the 1950's the population of suburban Cook County grew by almost 80 per cent. No less prodigious was the population growth being experienced in the surrounding counties. DuPage County's population in the 1950's jumped by 103 per cent; Lake County by 64 per cent; Will County by 43 per cent; McHenry County by 66 per cent; and Kane County by 40 per cent.

Predicting every election

Neither Daley nor his organization were panicked by this drain. They could count noses as well as the Census Bureau, and they knew that Chicago's population had remained relatively constant for three decades — that the city's numerical superiority was largely undiminished. Even in 1960, seven years after Daley assumed the chairmanship of his party, only 31 per cent of the county's population lived in the townships. The fact that the population of suburban Cook County had actually doubled in the 30 years since Daley joined County Treasurer Joseph McDonough's staff did not alter the common view that the suburbs were an annoyance which, like a pesty fly, could be paid little attention or ruthlessly crushed by the inner city's massive Democratic majorities.

Election returns from Cook County for gubernatorial and senatorial candidates between 1932 and 1956 reveal that a standoff of sorts had developed between the county's Democrats and Republicans, on the one hand, and between Chicago and the suburbs, on the other. The arrangement became so customary that it tended to memorialize the decided advantage enjoyed by the city and its Democratic organization. In election after election for a quarter of a century, 80 per cent of the county's vote on an average was cast by Chicagoans. And although no Democratic candidate for governor and only one for the U.S. Senate ever received an electoral majority in the townships during this period, their percentage of Chicago's vote consistently averaged out at 59 per cent.

A unique equilibrium had been achieved in Cook County, and the principal beneficiary was the Chicago Democratic organization

The Republican candidates expected and almost always received 60 per cent of the township vote, and they meekly settled for 40 per cent or less in the city. The outcomes of elections became increasingly predictable. In the 17 elections for governor and U.S. senator, Republicans carried Cook County only twice and by narrow margins. A unique equilibrium had been achieved in Cook County, and the principal beneficiary was the Chicago Democratic organization. Daley not only grew accustomed to this balance, he expected it to endure indefinitely.

The delivery of Chicago's Democratic vote, of course, did not necessarily assure victory for the party's statewide candidates, but invariably the city vote accounted for a large part of the survivor's winning margins. Gov. Henry Horner's Chicago plurality in 1932, for example, equaled 67 per cent of his statewide plurality — 83 per cent when he was reelected in 1935. Twelve years later Adlai Stevenson II in his race for governor carried the state by 572,000 votes, an astonishing 98 per cent of which came from Chicago. Here was unparalleled power which not only affected the course of Cook County and Illinois politics, but invariably sent quivers of foreboding or joyful anticipation through presidential candidates — depending, of course, on whether they were Republicans or Democrats.

Until the late 1960's, suburban voters of both parties were at best supporting actors in a larger political drama in which the director, producer and star was the Chicago Democratic organization. It controlled the government of Cook County almost as thoroughly as it did the government of Chicago. Between the time Richard Daley joined County Treasurer Joe McDonough's staff in 1930 and the year Daley died, Republicans were elected to countywide offices in only nine of twenty-four elections. Not a single Republican served in county office between 1933 and 1945. And after the war, in those identifiably good Republican years — 1946, 1950, 1952 and 1956, the Republicans actually enjoyed some success; they elected an occasional sheriff, treasurer, state's attorney and coroner. They even elected two County Board presidents — two in thirteen elections between 1922 and 1974. But Republican successes did not upset the historic equilibrium between Democrats and Republicans. They only revealed the machine's imperfections and need for new leadership — leadership which Daley was anxious to provide.

The plight of Cook County Republicans, of course, was not nearly as severe as the nonrecognition reserved for suburban Democrats. As Milton Rakove has pointed out, Chicago Democrats regarded their suburban brethren "... with suspicion or, at best, tolerance, consulted with them infrequently, ignored them often, and practically made no effort to bring them into a more important role in the party's inner council."

Neglecting suburban Dems

So few were their numbers that suburban Democrats had virtually no voice in the governance of their own party. In 1954, only 10 per cent of the 428,000 Democratic primary ballots cast in Cook County were suburban in origin. And as a result, the influence of Democratic township committeemen with respect to the slating of county candidates, the use of patronage and the distribution of the party's vast treasury was only one-tenth of the power exercised by city Democrats. Little was expected of suburban Democrats, and even less was given in return.

This neglect was absolute, and I am

inclined to believe that beginning in the 1960's the neglect was purposeful and designed to discourage the establishment in the suburbs of a potentially competitive center of Democratic power. The machine's control of Chicago was enhanced by its control of those county offices having any political, patronage or financial significance. And because there was no place in this design for suburban Democrats, the subordination of their interests to those of the Chicago Democratic organization became commonplace. At no time before or after Daley's ascendancy to his party's chairmanship was a suburban Democrat ever slated for a major county office. In time, Daley and his closest political advisors became immobilized by their own firmly held conviction — which statistics and appeals to reason could not shake — that suburban Democrats were so outnumbered by Republicans, so hopelessly disorganized, so lacking in discipline, and so disagreeably independent and ideological that they could never become an influential factor in our politics. An accommodation with such forces, in Daley's view, was not wise or necessary. But, this neglect nourished an underlying discontent which eventually unleashed forces Daley did not comprehend and could not fully control.

In the final analysis, Daley's views of the suburbs were shaped principally by his personal political experiences and observations in the 1930's, 1940's and 1950's; by the relatively static relationship between the city and the suburbs with respect to population and the apportionment of political power; and

By EUGENE KENNEDY

A portrait of the Mayor as a political chieftain

NOTHING was more characteristic of Mayor Daley than his capacity to listen without saying anything, without, in fact, allowing the slightest flicker of reaction to pass across his face. Let others talk, let them gush or cry or threaten; Daley could remain imperturbable, his own opinions and judgments kept twice sealed in his heart. Let others read into his expressions what they would; they would have no basis for their judgments but their own need while he, listening always with great concentration, would learn from what they said. His control enabled Daley to hold off his statement or decision until the last possible moment; there was, after all, every advantage in not committing oneself until the final instant of choice. Through such restraint one could draw out the opposition, keep them guessing, and build power all at the same time. It was an exercise of power that other men, anxious in their enthusiasms or doubts, could admire but seldom emulate. It was this control, for example, that enabled him to support U.S. presidents on Vietnam while he privately urged them over and over again to bring the war to an end.

Closely associated with this ability to control was Daley's enormous intuitive capacity to judge men and events by the way they registered in his own feelings. He could attend to his own reactions and find there a profile of the suppliant or the associate that enabled him to make a decision about his worthiness or weakness, not on the basis of what he said but on the basis of how he made Daley feel. This was as ancient as St. Thomas Aquinas' injunction: "Trust the authority of your own instincts." Operations at this pre-intellectual level were devoid of the ambiguities and complications of over-intellectualized schemes. Daley's greatest strength may have lain in this talent for understanding what others were like, of reading their innards to know who was strong and who was weak, who would bear up and who would collapse under pressure, who was true and who was false for the long haul of political adventure.

This was a remarkable gift . . . . It saved Daley a great deal of time and energy to have such a responsive set of instincts; they served him, according to his values and traditions, eminently well, and there were few who fooled him or fooled him for long in their self-presentation. It was no small advantage to understand that there were those he could trust and those he could not; his instincts told him, among other things, where threats lay to him, his work, or his family, and he heeded their messages with all the fierceness of a warrior intent on protecting his kingdom at whatever cost.

The Mayor did not, then, think things out in the manner of an intellectual. He did not have to cut through encircling coils of ambivalence, but rather responded with a kind of primal wholeness, acting on the resonations that rose from his innards like the varied notes through the mellowed wood of an old violin. This way of dealing with life made him a man oriented to action, to getting things done, and, therefore, he was exasperated with those who debated schemes endlessly or always pushed theoretical obstacles in the way. "Everybody is telling me why I can't do something," he would complain, "What I want are some people who can show me how we can get things done." And so he moved ahead at full speed, his eyes fixed on what he felt were the basic and decisive facts about human experience, on what motivated people and what made it possible to accomplish his desired goals. The environment in which he lived and worked was not that which was created for most persons by the media; he read all the papers, despite his denials, and he was well aware of what television reported, but he did not believe these interpretations most of the time any more than he believed professors or other experts. He grew to dislike the media intensely and, in chieftain fashion, did not try to make peace with them but attacked them head on. Such was his nature, such was his confidence in his own instincts.

EUGENE KENNEDY
Professor of psychology at Loyola University of Chicago, his new book, *Himself! The Life and Times of Mayor Richard J. Daley,* was published by Viking Press on St. Patrick's Day.

by an intense desire, inherited from his predecessors, to satisfy the exigencies and endless requirements of the Chicago Democratic organization.

These were the essential ideas or assumptions Richard Daley had formulated over a 30-year period about the nature of politics in the metropolitan region. And, during at least the pre-mayoral era, Daley's conclusions rested on a foundation that was solidly factual, thoroughly logical and largely irrefutable. But circumstances changed, and the once valid framework through which Daley sought to understand and control suburban politics proved too narrow and inflexible to accommodate the new and inexorable demographic and political realities of the 1960's and 1970's. He failed to grasp the long-term, but inescapable, implications of suburban growth and did almost nothing to adjust. Daley came to political maturity and reached the height of this power in an environment which had not changed appreciably between 1925 and 1955. As county chairman and later as mayor, Daley was fully committed to preserving Chicago's preeminent position in Illinois politics and to insuring the perpetuation of the Chicago Democratic organization's control of city and county government. The commitment left Daley little time to think about the suburbs.

Realizing his dependency

Richard Daley's political agenda for the 1960's and 1970's was largely defined by the outcome of his first and third campaigns for mayor of Chicago. It was an agenda that relegated the suburbs to a position of relative unimportance for the next two decades. He defeated Republican Robert Merriam in 1955 by only 127,000 votes, and in the process Daley had failed to carry 21 of the city's 50 wards. Things might have been worse had it not been for the incredible majorities amassed for Daley by the notoriously Democratic river wards on the city's west and south sides. The so-called "automatic eleven" provided Daley with a 125,000-vote plurality, which was almost precisely the margin by which he won the election.

Any exhilaration Daley experienced on April 5, 1955, was tempered by a sinking realization that his political base was narrow and, what was more sobering, a racially changing one. The city's

It was imperative, in Daley's view, to create a base of power that was citywide as well as racially and ethnically diverse

black population had reached the 700,000 mark, a threefold increase since 1930. Although blacks had constituted majorities in only two wards after World War II, by 1955 Congressman William Dawson, the city's preeminent black Democrat, controlled five south-side wards. And the wards on the city's west side — those which were largely the creations of Jacob Arvey, Al Horan and Frank Sain — were also experiencing rapid racial change. By 1963, the year Daley was seeking a third term as mayor, 10 wards held black majorities and several more were undergoing irreversible transition.

Daley's dependency on 20 wards, more than half of which had become black within eight years, was a condition which eventually required 15 years of his time, energy and organizational skill to alter. Daley's resolve to free himself of this dependency hardened after his race against Ben Adamowski in 1963 when half of Daley's votes were cast by blacks. But 1963 was different than 1955; race had become a conspicuous issue and Daley's dependency on the river wards and on the black vote had become even more pronounced. Taking full advantage of the white backlash, Adamowski piled up incredible pluralities in those white areas bordering on the city's black neighborhoods. He carried 18 wards, but when all the votes were counted, victory had eluded the Democrat-turned Republican by 140,000 votes.

Daley quickly realized that his survival required the creation of a Democratic organization which enjoyed a genuinely citywide base of support — the kind of support that would not only overwhelm and demoralize the city's Republicans, but would put some distance between himself and the city's burgeoning black population. For the first time, all of his powers as mayor and party chairman were focused on the achievement of this objective, including the services of thousands of city and county patronage workers. City services in Republican and marginally Democratic wards — like street and sidewalk repairs, garbage pickups, snow removal and all the rest — markedly improved. There were jobs to be parcelled out and money to be spent. This Herculean effort culminated in the 1967 mayoral election, in which Daley trounced Republican John Waner by more than a half million votes and carried all 50 of the city's wards. Daley repeated this performance again in 1971 and 1975, and while his pluralities were smaller, his percentage of the total vote continued to range between 70 and 80 per cent.

Governing a city and leading its Democratic party organization were undertakings to which Richard Daley fully applied his and his party's enormous financial, human and organizational resources. It was imperative, in Daley's view, to create a base of power that was citywide as well as racially and ethnically diverse, and until that base was secured, the diversion of resources for other political purposes was strictly limited. Before 1955 Daley had little reason to think about the suburbs, and after 1955 he had neither the time nor inclination to think about them at all. There was simply too much to be done in Chicago.

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Reprinted from *Illinois Issues,* February 1978

SECOND OF A TWO-PART ARTICLE By LAWRENCE N. HANSEN

The Daley Legacy

Last month Illinois Issues *began a special series of articles assessing the influence and achievements of Mayor Daley. These reports were first presented at a conference entitled "Richard J. Daley's Chicago," sponsored by the History Department of the University of Illinois at Chicago Circle and the Chicago Historical Society on October 11-14, 1977. With grant assistance from the Illinois Humanities Council, Dr. Melvin G. Holli, conference director, assembled forty-odd journalists, academics, city officials and neighborhood leaders to present their views on the late mayor and his city. The second half of Lawrence N. Hansen's article, "Mayor Daley and the suburbs," appears here. The first half along with Eugene Kennedy's "A Portrait of the Mayor as a political chieftain," are on pages 72-75. Other articles published in* Illinois Issues *include an analysis of Mayor Daley's strength as a politician and public official by Milton Rakove, and Ralph Whitehead's article on the Daley machine as a communications medium. Professors Holli and Peter d'A. Jones are editing the proceedings of the conference for publication in book form.*

Mayor Daley and the suburbs

LAWRENCE N. HANSEN
Special assistant to Sen. Adlai Stevenson, he is a graduate of the University of Illinois.

SUBURBAN suspicions about Daley's designs on the suburbs became so intense and, in my view, so exaggerated in the late 1950's and 1960's that I am not certain Daley, even if he had been so inclined, could have placed the city-suburban relationship on a sounder, more constructive footing. In the late 1950's Republicans began accusing Daley of being the boss of a corrupt and rapacious machine whose ultimate design was to swallow up the defenseless suburbs. Because of who Daley was and what he stood for, the movement to "save our suburbs" (S.O.S.) gained a momentum which was not entirely warranted.

On the other hand, suburban Democrats — mostly former Chicagoans — tend to acquiesce to this hysteria, finding it fashionable in their new surroundings to disassociate themselves, at least publicly, from an organization whose inner city orientation and well-known political methods no longer seemed relevant to their needs. Those who were better educated and financially secure, for example, transplants from Chicago's Lakefront and Hyde Park neighborhoods, clung for the most part to their Democratic heritage but moved to the forefront in demanding party reform and more quality candidates. That these various forces had a leavening effect on suburban politics cannot be doubted. For while they produced little in the way of real reform, the result was consistently larger voter turnouts for those Democratic candidates who were not demonstrably associated in the public's mind with the Chicago Democratic organization. None of this was planned by Daley or anyone else, of course. But suburban neglect was bearing fruit, and, ironically, suburban Republicans were finding the fruit as distasteful as the Daley Democrats.

I am not certain one can pinpoint with precision which single event, if any, aroused Daley's dormant curiosity about the suburbs. Certain political vicissitudes in the 1970's must have raised doubts in his own mind about the strategic wisdom of having left the suburbs to their own devices for so long. Adlai Stevenson III's election to the U.S. Senate in 1970 was one such event. Not only did Stevenson win with an impressive 73 per cent majority in Chicago, but he gathered in 53 per cent of the vote in suburban Cook County and beat his opponent in 14 of 28 townships. However, a month later in a special election to adopt a new state Constitution, Cook County in addition

to ratifying the proposed Constitution overwhelmingly, also voted narrowly in favor of a separate proposition providing for gubernatorial appointment of judges. While the proposition was opposed by the Chicago Democratic organization and lost statewide, its favorable reception in Cook County was undoubtedly an embarrassment to Daley, who had vigorously insisted there was something insidious about depriving voters of their right to elect judges. While Chicagoans had only voted by 44 per cent for the amendment, suburbanites tipped the scale by casting 66 per cent of their ballots in favor of Proposition 2B.

In the spring of 1972 the Chicago Democratic organization delivered a majority of the city's primary vote for the party's endorsed candidate for governor, Paul Simon, but only by a slim margin of 85,000 votes. Dan Walker, the challenger — insisting that the central issue in the campaign was Richard Daley and political bossism — amassed 64 per cent of the vote in the townships. Simon, having been thoroughly victimized by Walker's demagoguery and Daley's long-standing neglect of the suburbs, limped out of Cook County with a 21,000-vote plurality, and, to the surprise of many observers, a promising political career suddenly came to a grinding and unceremonious halt.

Reasons to reassess

As a result of these events, Daley had more than enough reasons to reassess the potential of suburban Democrats as purveyors of political goodness or political mischief. He was inclined, of course, toward the latter view, believing, I am sure, that once Gov. Walker was retired, suburban political behavior would assume again a more familiar, more predictable pattern. Painfully, Daley was to learn otherwise. His two candidates for the Illinois Supreme Court were defeated in the 1976 Democratic primary. While neither Judges Power nor Dieringer did especially well in Chicago, it was the townships of Cook which applied the *coup de grace* by voting for the challengers — Dooley and Clark — at a better than 2 to 1 ratio. Whatever sorrow Daley felt at the moment was more than amply compensated for by the knowledge that suburban Democrats had joined him this time in deposing Dan Walker, the first incumbent governor in the state's history to be turned out of office by his own party.

The results of the 1976 primary illustrated the fiercely independent nature of the suburban electorate. It was discriminating and blindly loyal to no political party. Suburbanites were not going to be dictated to by a Richard Daley or a Dan Walker. When Democratic or Republican candidates and causes merited the support of suburban voters, they would get it. Two years earlier the principal beneficiaries of this enlightened politics were Adlai Stevenson III and Alan Dixon, both of whom triumphed in the townships of Cook and did unusually well in the five surrounding suburban counties. The loser in all of this was Daley, who must have begun to realize that a new era was dawning — an era in which Illinois' balance of political power was gradually shifting from Chicago to the vast suburban region surrounding the city. Two years later, as a candidate for secretary of state, Alan Dixon became the first Democrat ever to win more votes in the suburbs than in Chicago — an uprecedented achievement which could only have confirmed Daley's worst fears.

Gov. Stevenson once observed that some people never see the writing on the wall because their backs are up against it. I think this aptly describes the predicament in which Daley found himself. The signs pointing to dramatic changes were there to be read and acted upon, and presumably they would have been had Daley but turned around. But he was immobilized by a preoccupation with Chicago politics and by an adherence to outdated notions about the political impotence of the suburbs.

The writing on the wall could not have been clearer. Between 1950 and 1970 the suburban region absorbed two million new people, the vast majority of whom had migrated from Chicago. And, of course, the city, despite a steady stream of newcomers — mostly Black and Latin — lost population. Forty per cent of Cook County's population in 1970 lived in the townships compared with only 20 per cent 20 years earlier. For the first time the number of people living in the suburban region exceeded by one-quarter million the number living in Chicago.

Not only did Chicago have less people in the 1970's, but less voters. Between 1968 and 1976, total registrations in the city dropped 15 per cent. During that same short eight-year period voter registration in the suburban region increased 26 per cent (22 per cent in the townships of Cook). When Daley was running for a sixth term as mayor in 1975, it could not have escaped his attention that there were 30 per cent fewer Chicagoans registered for that election than in 1955, the first year he campaigned for that office.

Suburban voters were participating in Democratic primaries in numbers no one could have reasonably anticipated a decade ago. In the ring counties, Democratic primary participation jumped 347 per cent between 1968 and 1976 and in the townships of Cook by 274 per cent. This development impacted not only on city Democratic preferences, but also on suburban Republican politics, because proportionate participation by suburban Republicans in primary elections declined sharply.

Fifteen years ago, Chicago normally provided statewide Democratic candidates with 40 to 45 per cent of their total vote. By 1976 that percentage had slipped to between 30 and 35 per cent. The suburban region, including the townships of Cook, now provides Democratic candidates with almost a third of their statewide vote.

There was a time when all areas outside of Cook County were referred to as "downstate." The designation comported with the general rule that political power in Illinois was equally divided between Cook County and the state's remaining 101 counties. In the last decade, however, the suburbs have emerged as a separate and distinct political entity, and I believe it is only a matter of time before they will be wielding more political authority than either Chicago or the balance of the state. Illinois, like ancient Gaul, is now divided into three parts, and that is a reality with which Richard Daley never came to terms.

Actions of frustration

In the final year of his life, when it was really too late to reverse the events of 20 years, Daley initiated two actions which illustrated his now growing frustration with the suburbs. For years large numbers of the city's 35,000 employees had moved out of the city and into the

suburbs. Many continued to contribute financially to the city Democratic organization and to work city precincts on election day, but most did so as a condition of their employment rather than as an expression of faith in the city's future. This geographic displacement of much of the organization's muscle and sinew was unacceptable to Daley, and in the spring of 1976 a policy was enacted requiring city employees to live in the city. The publicly stated rationale for the residency policy, of course, did not allude to politics or to the suburbs, but the policy was thoroughly political. "In order for a city employee to be most effective," read the policy, "he or she must identify with the needs and aspirations of the residents of the city of Chicago . . . . As a city resident an employee participates directly in the activities of a neighborhood of the city. This participation and commitment is essential to the development of a strong sense of public service as it relates to the citizens of Chicago." Many employees moved back to Chicago because their livelihoods depended on it, but in the end, the policy neither reduced the attractiveness of the suburbs for them or their families nor even remotely stemmed the larger outmigration of Chicagoans.

The second action was a clumsy effort, spearheaded by the mayor's director of consumer affairs, to create suburban political clubs to rival existing Democratic township organizations. The purpose was obvious: to either take over these organizations outright or at least reshape them into the image of the Chicago organization, and in the process to exact through various measures a larger degree of party discipline. While the effort failed, old tensions between city and suburban Democrats were revived, and mutually-shared suspicions exacerbated.

Changes after Daley

The mayor's death seems to have emancipated some of the organization's younger leaders who for years have envyingly viewed the suburbs as an ideal (and perhaps the only) outlet for their own ambitions. They have recognized for some time that the Democratic grass was becoming greener and more lush on the suburban side of the fence, but felt constrained while the mayor was living to pretend at least that their futures were bound up with the city — a city in which there was no room for some of them to move up and prosper politically. Two powerful city-based Democrats — state Sen. Philip Rock and Circuit Court Clerk Morgan Finley — have moved to the suburbs recently, and both intend to challenge incumbent township Democratic committeemen next spring. Others may soon do the same. This marks the beginning of a new and curious period in the relationship between the city and the suburbs, and it raises a serious issue for the once ignored and abused suburban Democrats: will they take the initiative in the future to redefine their relationship to the Democrats of Chicago, or will they leave such matters exclusively to Chicago and its recent émigrés.

As one looks ahead a quarter of a century, the imagination is staggered by the political probabilities and possibilities in the post-Daley era

Politics is an inexact and largely unpredictable art. Peer as we may into the future, there is simply no way of accurately foreseeing political events. What we do know for a certainty is that change is the one great constant in life, and it is perhaps a more significant force in politics than in almost any other form of human enterprise. Suburban politics will change appreciably in the post-Daley era; that much we can safely predict.

Population forecasters tell us that by the year 2000 there will be roughly an equal number of people living in Chicago and in suburban Cook County. The combined population of the suburban region — including the ring counties and the townships of Cook — will be almost twice the size of Chicago's population. If these estimates are accurate, the political consequences will be profound. In the space of just 70 years — from the day Dick Daley became apprenticed to Treasurer McDonough to the turn of the century, Chicago will have lost 300,000 people and the suburbs will have gained 5,000,000.

As one looks ahead a quarter of a century, the imagination is staggered by the political probabilities and possibilities in the post-Daley era. For example, the suburban region's representation in the Illinois General Assembly and in Congress will certainly be larger than Chicago's. Eventually the apportionment of the Cook County Board of Commissioners will be evenly divided between the city and the townships, but control of the board and other county-wide offices is likely to remain largely in the hands of Democrats. One can imagine a monumental struggle between Chicago and the townships for control of the Cook County Democratic Central Committee, the outcome of which will depend heavily on the political sophistication and participation of voters in an overwhelmingly black Chicago. The Republican party, fearing that its principle center of support is eroding, will launch formidable counteroffensives in the suburbs, and, as a result, Republicans may enjoy an advantage which is indecisive and transitory.

Conclusion

The intriguing question is whether the heirs of Richard Daley will ever be able to replicate in Chicago or the suburbs the kind of political organization he brought to full maturity as mayor and party chairman. There is a striking resemblance between the older suburbs of Cook County and the white, ethnic, lower-middle and middle class neighborhoods of Chicago 30 years ago, and by the 1980's and 1990's the resemblance will become even more pronounced. This is an environment which could in time conceivably yield to a new and overpowering Democratic thrust. Machiavelli observed that "there is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things." There is no doubt in my mind that in the near future a large number of Chicago's younger, bolder and more ambitious Democratic party leaders will abandon the city in search of suburban conquests. They will attempt, as every generation of politicians has since time immemorial, to create a new order.□

By CHARLES B. CLEVELAND

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Bilandic: How did he get the mayor's job?

MICHAEL BILANDIC is now the elected mayor of Chicago. But almost no one would have considered Bilandic a likely successor to Mayor Richard J. Daley before he died in office last December.

During Daley's 20 years in office, speculation concerning his successor had centered on several individuals — Bilandic was not one of them. Tom Keane was. He headed the Chicago City Council and ran it with an iron hand, but always carefully avoided any confrontation with Daley. He had two flaws: he was arrogant and he had a weakness for questionable deals. The second sent him to prison and eliminated him from contention.

Congressman Daniel Rostenkowski was another. He had become almost the traditional chairman of the Democratic party's slatemaking committee, a top figure in the ethnically strong Polish community and veteran of dozens of political wars. But Rostenkowski was moving toward the top of the Washington ladder and never was a serious contender.

Equally prominent in speculation over the years was George W. Dunne, president of the Cook County Board of Commissioners, and the man regarded as the most powerful officeholder in Cook County next to Daley himself. There were other names: Ken Sain from the "new breed" of professional managers and County Clerk Stanley Kusper from the list of second-line politicians.

The banking-business community had no candidate, but its informal guardian was Robert Abboud, head of the First National Bank, a political neophyte but a savvy businessman. New York bankers, confident of Chicago while Daley was alive, sent word for the city to withhold any new bonds until a new mayor was picked; by inference, this was a veto power if needed.

The first step in replacing Daley came in the selection of an acting mayor by the City Council. Traditionally, the real power in the City Council has been chairman of the finance committee; with Keane in jail, that job was now in the hands of Michael A. Bilandic, a 54-year-old bachelor, attorney and alderman from Daley's own 11th ward in Bridgeport. Quiet and unassuming, he had stayed free of political scandal and had earned a reputation as a hard working, talented administrator.

There were other contenders. Chicago's black aldermen had a good candidate, Wilson Frost, president pro tem of the City Council. Then there was Ald. Ed Vrdolyak of the 10th ward who had quickly lined up eight other aldermen on grounds it was time a non-Irishman got party leadership (all party leaders for more than 40 years had been Irish).

Mystery man

Behind the scenes, however, was a "mystery man," Thomas R. Donovan. Donovan, 39, had gone to De La Salle Institute, the high school that graduated Daley and a host of politicians. He came to City Hall in 1969 and caught Mayor Daley's eye. Donovan was moved into the mayor's circle, first as an assistant, then as patronage chief. He proved hard working, personable and accommodating and knew what almost nobody else did: how many jobs there were and who had them. In politics, that's like having the combination to the secret safe. In the game of political poker that was about to be played, Donovan not only had his own cards to play, but he knew just about what everybody else had going for them, too. There are some who believe Donovan might have won the big job himself, but such a coup was unlikely.

Finally, Bilandic was the most obvious choice, especially for the first step — appointment as acting mayor. He was on the job, knowledgeable about current city matters, one of the Bridgeport group and acceptable to the business-banking community.

Vrodlyak with nine votes and Frost with eighteen, had between them a majority of the 50-man City Council — on paper. But, it only took Donovan and the Bridgeport group a lunch hour and part of an afternoon to destroy that threat. Frost was named City Council floor leader and, in return, their votes went to Bilandic for acting mayor. Vrodlyak settled for president pro tem.

Better transition

Some sources believe the transition could have been handled more diplomatically, and that Frost would have established the importance of the black community in Chicago by serving as acting mayor, then turning power back to the organization. But the Bridgeport group didn't want to take a chance; they insisted that Bilandic step in as a temporary mayor. As he was being sworn in as acting mayor, Bilandic solemnly announced he would only serve temporarily until an election could be held and that he would not be a candidate. His statement turned out to be political rhetoric.

Action was not confined to the City Council since Daley's death had also created a vacancy in his other position: Democratic county chairman. George Dunne concentrated on getting this job; there is no agreement on his motives. Some of his allies believe he really didn't want the job of mayor and the problems of the city that went with it. Others feel that he was waiting for a "draft" from the party or that he gambled on the job of county chairman automatically

bringing him the job of mayor. But even getting the county chairman's job was a fight for Dunne. Edmund Kelly, a ward committeeman and big wheel in the Chicago Park District, made a bid for the job. Before the showdown, Kelly folded, perhaps because Daley's son endorsed Dunne. Some insiders feel he made a mistake and could have won. We'll never know.

In any event, Dunne became county chairman. Donovan and the Bridgeport group controlled the City Hall's 10,000 jobs and Bilandic gradually eased from "acting" mayor to announced candidate for the job on a permanent basis. Well-staged meetings at City Hall showcased Bilandic's support in the business and labor community; he took over the ceremonial duties that added a look of permanence to his job. Meanwhile Dunne, for whatever reasons, was relatively inactive. Also there was considerable sentiment among the pros that the jobs of mayor and county chairman should be separated. They didn't want one man with all the power again.

The Bridgeport crew then came up with their clincher. Ald. Vito Marzullo, a crusty West-side politician with seniority on the county committee and influence extending far beyond his ward boundaries, emerged from a City Hall meeting announcing his support for Bilandic as candidate. When Fred Roti, a spokesman for the Loop, identified with the old Syndicate, joined in, resistance to Bilandic was broken. Dunne's name was never seriously considered again for the primary.

However, Ald. Roman Pucinski entered the Democratic primary anyway and walked off with a third of the vote; state Sen. Harold Washington rallied part of the black vote and former State's Atty. Ed Hanrahan also nibbled away at the primary vote. But the Bridgeport group had gained their goal: they had a hammerlock on City Hall, just as they had had in the days of Kelly, Kennelly and Daley. In the process, they showed a lot of old pros how to play politics.□

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By PETER W. COLBY and PAUL MICHAEL GREEN

Burgeoning Suburban power, shrinking Chicago clout:

Downstate holds the key to victory

THE PURPOSE of this article is to analyze the distribution of potential voter support for the Democratic and Republican parties in the 1978 statewide elections. Since the 1930's, elections in Illinois have been analyzed in terms of Democratic Cook County versus Republican Downstate (the other 101 counties). Every election night, pundits have restated the number one political axiom in Illinois: the Democrats must build a large enough vote cushion in Cook County to overcome the deluge of Republican votes Downstate.

There was a good deal of truth in this analysis, for it was only with the development of Chicago as a Democratic stronghold in the 1930's that the Democratic party became competitive in the state. As table 1 below reveals, the Republicans captured all 12 important statewide races during the 1920's. In the 1930's, however, the Democrats were able to win all eleven statewide contests, including three in which the Republican candidate carried Downstate. Thereafter, a balance developed between the parties. In the 1940's, 1960's, and thus far in the 1970's, the Democrats and the Republicans have split election victories. Only in the 1950's were the Republicans able to achieve substantial successes, winning eight of ten elections.

Table 1

Results of Illinois voting for President, Governor, Senator and state Treasurer* (1900-1976)

Year	Number of races	Number of Democratic victories	Number of Democratic candidates carrying Cook County	Number of Democratic candidates carrying Downstate (101 counties)
1900-1909	8	0	1	0
1910-1919**	9	2	5	2
1920-1929	12	0	2	0
1930-1939	11	11	11	8
1940-1949	12	6	10	1
1950-1959	10	2	6	0
1960-1969	12	6	10	2
1970-1977	9	4	6	2

**Nonpresidential year Treasurer elections only*

***Normal Republican vote was divided by Republican and Progressive candidates for President and Governor in 1912, allowing Democrats to win plurality Downstate and statewide. Progressive Presidential Candidate Theodore Roosevelt carried Cook County.*

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The parity between the two parties statewide was achieved by a balancing of solidly Democratic Cook County against solidly Republican Downstate. From 1940 through 1977, the Democrats carried Cook County 32 of 43 times. Every time they lost Cook County, they lost the statewide race. Similarly, the Republicans carried Downstate in 38 of the 43 contests, and the five times they lost Downstate, they lost the election. Of even more interest are the 27 elections in which the Democratic candidate carried Cook County and the Republican candidate carried Downstate. Of those battles, the Republicans won 14, the Democrats won 13. This data is summarized in table 2 below.

In short, analyzing elections in terms of Democratic Cook County versus Republican Downstate does generally describe politics in Illinois since the 1940's. But this analysis is superficial and masks a number of important developments to which both parties must adjust if future statewide elections are to continue to be competitive. Otherwise, one party may again dominate the state as did the Republicans in the 1920's and the Democrats in the 1930's. What follows is an analysis of these underlying trends and their implications for statewide elections in Illinois.

Statewide elections now must be contested in terms of three areas: Chicago, Suburbs and Downstate

Once it made a good deal of sense to call Cook County Democratic territory even though the Cook County suburbs were strongly Republican. After all, in 1930, the Chicago population was 85 per cent of the total county population. It also once made sense to consider the Collar Counties (Lake, McHenry, Kane, DuPage and Will) as part of the Downstate vote even though as a group they were much more strongly Republican than most of the other 96 Downstate counties. As recently as 1950, the total Collar County population was only 16 per cent of the Downstate population.

Today, however, the situation is quite different. The total suburban population (including Cook County outside Chicago plus the Collar Counties) reached 3,857,000 in 1975, compared to 3,126,000 in Chicago and approximate-

Table 2

Summary of results of Illinois voting for President, Governor, Senator and state Treasurer (1940-1977)

	Democratic statewide victory	Republican statewide victory
Democrats carrying Cook alone	13	14
Democrats carrying Downstate	5	0
Republicans carrying Downstate alone	14	13
Republicans carrying Cook	0	11

ly 4,131,000 in the remaining 96 Downstate counties. In percentages, the Suburbs now represent 35 per cent of the state population, Chicago is 28 and Downstate is 37 per cent. The changing distribution of population in Illinois is depicted in figure 1 below.

The nonwhite population of Chicago has been steadily growing while the nonwhite population of the rest of Illinois has not

In 1940, the black population of Chicago represented only 6.7 per cent of the city's residents. The black population of the rest of the state was 3.5 per cent. By 1970, the black population had reached 32.7 per cent of the city total, while the black population of the rest of Illinois remained at 3.4 per cent (see figure 2). The Spanish-speaking population of Chicago was reported at 7.3 per cent of the city in 1970. Thus, Chicago was 40 per cent nonwhite in 1970 and will probably have a nonwhite majority by 1980. At the same time, the nonwhite population of the rest of the state will be politically insignificant.

The changing state population patterns are reflected in changing state vote totals*: the Chicago vote is shrinking, the Suburban vote is rising, the Downstate vote remains constant

As population has shifted from the city of Chicago to the Suburbs, the number of votes cast in Chicago has been shrinking in absolute numbers and as a percentage of the statewide vote. As shown in tables 3 and 4 below, the Chicago vote has declined since 1948 from 1.850 million to 1.227 million in 1976. As a percentage of the state vote, Chicago has diminished from 45 to 26 per cent. Thus the Chicago vote is only about half as important to winning statewide elections in 1978 as it was thirty years ago in 1948. The suburban vote, on the other hand, has more than tripled since 1932, increasing steadily in every election. The other 96 counties (Downstate) have maintained a 38 per cent portion of the state vote since 1944 with little variation. In sum, every passing year makes the Chicago vote less important and the suburban vote more important in statewide elections.

A higher percentage of Chicago residents are voting Democratic than ever before, suburbanites have maintained a steady pro-Republican percentage, and Downstaters closely mirror the statewide outcome, giving only a slight edge to Republicans

In any specific election, candidates, issues and other circumstances beside political party support help determine the outcome. These other factors may be becoming more important — if one looks at Illinois elections since 1900, there have been only five occasions in which the party winning the majority of statewide races did not either sweep or win all but one contest. Three of these occasions were 1968, 1972 and 1976. Thus, Table 5, below shows a good number of ups and downs for each party in each of the state's three major voting regions. Nevertheless, it is possible to see a number of patterns in table 5. For example, Chicago has supported only one Republican presidential candidate in the last 12 elections (Eisenhower in 1956) while the Suburbs have never backed a Democrat.

**Unless specified, all voting statistics used in this paper are from Presidential elections. The patterns of party voting in Presidential elections are likely to carry over to other races.*

Figure 1
Population of sections of Illinois 1950-1975 (in millions)

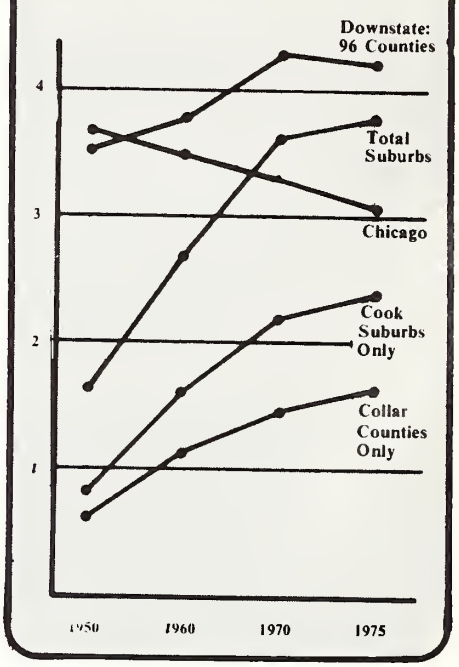

Table 3
Total vote* for President cast in Chicago, Suburbs, Downstate and statewide (1932-1976)

Year	Chicago	Suburbs	Downstate	Illinois Total
1932	1,394	493	1,520	3,407
1936	1,689	563	1,702	3,954
1940	1,766	616	1,828	4,210
1944	1,830	639	1,567	4,036
1948	1,850	657	1,475	3,982
1952	1,840	879	1,761	4,480
1956	1,661	1,009	1,737	4,407
1960	1,680	1,235	1,843	4,757
1964	1,607	1,328	1,767	4,703
1968	1,439	1,424	1,757	4,620
1972	1,323	1,597	1,803	4,723
1976	1,227	1,656	1,836	4,719

**Totals expressed in thousands of votes, include minor party candidates.*

Table 4
Percentage* of statewide vote cast for President: Chicago, Suburbs and Downstate (1932-1976)

Year	Chicago	Suburbs	Downstate
1932	41%	14%	45%
1936	42%	14%	43%
1940	41%	15%	43%
1944	45%	16%	38%
1948	46%	16%	37%
1952	41%	20%	39%
1956	38%	22%	39%
1960	35%	25%	39%
1964	34%	28%	37%
1968	31%	30%	38%
1972	28%	33%	38%
1976	26%	35%	38%

**Lines do not add to exactly 100% because of rounding to nearest whole percent.*

Table 5
Percentage of two-party vote for Democratic Presidential candidate in Chicago, Suburbs, Downstate and statewide (1932-1976)

Year	Chicago	Suburbs	Downstate	State of Illinois
1932	59.2%	43.5%	59.0%	56.8%
1936	66.9%	48.0%	57.0%	59.3%
1940	58.5%	38.6%	48.2%	51.1%
1944	61.4%	40.0%	45.1%	51.7%
1948	58.6%	35.2%	46.8%	50.4%
1952	54.4%	33.0%	41.2%	45.0%
1956	48.6%	27.6%	39.7%	40.3%
1960	63.4%	39.7%	44.7%	50.0%
1964	71.0%	47.7%	57.8%	59.5%
1968	60.8%	33.0%	43.7%	48.4%
1972	57.3%	30.2%	37.3%	40.5%
1976	67.7%	36.8%	47.4%	49.0%

Figure 2

Black Population (percentage)

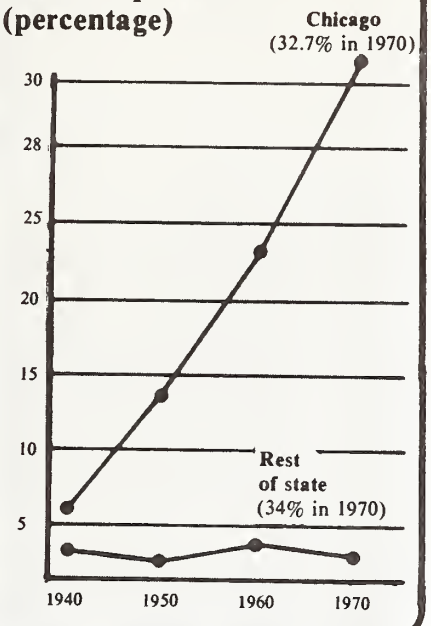

Table 6 is much more interesting because it shows the difference between the percentage a candidate obtained in a specific area and his percentage statewide. This tends to "cancel out" the statewide appeal of particular candidates or issues and reveal the political party preferences of the city, suburbs and downstate. There are strong and consistent patterns of party support revealed by this analysis. As table 6 demonstrates, the city of Chicago has become more different and more Democratic compared to the rest of Illinois over the past 40 years. During the same period, the Suburbs have shown remarkable consistency in their support for Republicans, ranging from 10.3 to 13.3 per cent in 11 of the 12 elections. **There are now more Democrats in the Suburbs than ever before, but there are also more Republicans. On a percentage basis, the Republicans have maintained their advantage.** The Downstate vote is much more typical of the statewide totals as the small deviations indicate. This is not surprising, given the large and heterogeneous population which we have lumped into one category called "Downstate." Nonetheless, the 96 Downstate counties combined have had a slight pro-Republican leaning in every election since 1936 compared with statewide voting.

Democrats rely on Chicago for the vote; Republicans on the Suburbs

Over the years from 1932 to 1976, the distribution of Democratic party voters has been much more stable than the distribution of Republican voters. Nevertheless, the Democrats as well as the Republicans now get fewer of their votes in Chicago and more of their votes in the Suburbs than in the past (see tables 7 and 8). Specifically, the Chicago portion of the statewide Democratic vote has diminished from 42.4 to 35.8 per cent, while the Suburban share increased from 11.6 to 26.3 per cent. The Republicans now get 16.4 per cent of their votes from the city and 43.2 per cent from the Suburbs, compared to 38.3 in the city and 18.0 per cent in the Suburbs back in 1932.

In the new balance of power, the Downstate vote is crucial

Table 9 below shows the actual margin of victory attained by Presidential candidates in the last 12 elections in Illinois. As with table 5 discussed earlier, table 9 contains great variations from election to election depending on the popularity of particular candidates. However, a close look at several of the elections reveals some interesting trends of party support. First, note the close Democratic election victories of 1940, 1944 and 1948. These elections conformed to the old Chicago versus Downstate pattern, and in each case, the Democratic victory margin in the city was sufficient to overcome Republican victory pluralities in the Suburbs and Downstate. Second, examine the vote totals in 1960. Like the 1940, 1944 and 1948 races, the Democratic victory margin in Chicago was sufficient to

Table 6

Deviation of actual percentage of two-party vote for Democratic Presidential candidate in Chicago, Suburbs, Downstate from statewide percentage (1932-1976)

Year	Chicago	Suburbs	Downstate
1932	2.4% D	13.3% R	2.2% D
1936	7.6% D	11.3% R	2.3% R
1940	7.4% D	12.5% R	2.9% R
1944	9.7% D	11.7% R	6.6% R
1948	8.2% D	15.2% R	3.6% R
1952	9.4% D	12.0% R	3.8% R
1956	8.3% D	12.8% R	0.6% R
1960	13.4% D	10.3% R	5.3% R
1964	11.5% D	11.8% R	1.7% R
1968	12.4% D	14.6% R	4.7% R
1972	16.8% D	10.3% R	3.2% R
1976	18.7% D	12.2% R	1.6% R

Table 7

Total Democratic vote* and percentage of statewide Democratic vote for President cast in Chicago, Suburbs and Downstate (1932-1976) **Total vote expressed in thousands of votes.*

Year	Chicago	Suburbs	Downstate	Illinois
1932	798 (42.4%)	219 (11.6%)	864 (45.9%)	1,882
1936	1,099 (48.1%)	263 (11.5%)	947 (41.4%)	2,283
1940	1,030 (48.0%)	237 (11.0%)	877 (40.9%)	2,143
1944	1,121 (53.9%)	255 (12.2%)	703 (33.8%)	2,079
1948	1,077 (53.9%)	230 (11.5%)	687 (34.4%)	1,995
1952	999 (49.6%)	289 (14.3%)	726 (36.0%)	2,014
1956	807 (45.4%)	279 (15.7%)	690 (38.8%)	1,776
1960	1,065 (44.7%)	489 (20.5%)	824 (34.6%)	2,378
1964	1,141 (40.7%)	634 (22.6%)	1,022 (36.5%)	2,797
1968	874 (42.8%)	468 (22.9%)	698 (34.2%)	2,040
1972	758 (39.6%)	483 (25.2%)	672 (35.1%)	1,913
1976	815 (35.8%)	598 (26.3%)	858 (37.7%)	2,271

Table 8

Total Republican vote* and percentage of statewide Republican vote for President cast in Chicago, Suburbs and Downstate (1932-1976) **Total vote expressed in thousands of votes.*

Year	Chicago	Suburbs	Downstate	Illinois Total
1932	549 (38.3%)	259 (18.0%)	625 (43.6%)	1,433
1936	544 (34.6%)	284 (18.1%)	740 (47.1%)	1,568
1940	732 (35.7%)	376 (18.3%)	939 (45.8%)	2,047
1944	705 (36.3%)	382 (19.7%)	852 (43.9%)	1,939
1948	762 (38.8%)	422 (21.5%)	777 (39.6%)	1,961
1952	838 (34.1%)	588 (23.9%)	1,031 (41.9%)	2,457
1956	849 (32.3%)	729 (27.7%)	1,045 (39.5%)	2,623
1960	609 (25.7%)	744 (31.4%)	1,016 (42.8%)	2,369
1964	466 (24.4%)	696 (36.5%)	744 (39.0%)	1,906
1968	453 (20.8%)	826 (37.9%)	896 (41.1%)	2,175
1972	556 (19.9%)	1,108 (39.7%)	1.124 (40.3%)	2,788
1976	389 (16.4%)	1,023 (43.2%)	952 (40.2%)	2.364

overcome Republican strength in the Suburbs and the rest of Illinois. But in each area, the margins of victory were larger than in any of the earlier elections, the net result being a very close Democratic victory. At the time, Kennedy's 1960 victory in Illinois was hailed as proof of the ability of Chicago Democrats to control state elections. We can see now, however, that 1960 was something of a "last hurrah." Changing population patterns were about to make it virtually impossible for Chicago to outvote the rest of the state. Thus, in 1968 and particularly in 1976, huge victory margins in Chicago were overwhelmed by even larger Republican victory margins in the Suburbs and Downstate. In 1976, the Suburban vote alone gave Ford a bigger margin than the city produced for Carter. It is interesting to compare the percentages attained by Truman in 1948, Kennedy in 1960 and Carter in 1976 with their vote margins:

	Chicago	Suburbs	Downstate
Truman 1948	58.6%	35.2%	46.8%
	+316,000	-192,000	-89,000
Kennedy 1960	63.6%	39.7%	44.7%
	+456,000	-254,000	-194,000
Carter 1976	67.7%	36.8%	47.4%
	+425,000	-425,000	-93,000

Specifically, it should be noted that Carter did almost 4 per cent better than Kennedy in the city of Chicago, but his margin was 46,000 votes less. In the Suburbs, Kennedy did 4.5 per cent better than Truman, but lost by 62,000 more votes than did Truman. Carter scored 1.6 per cent better than Truman in the Suburbs, but in actual vote margins, he ran 233,000 votes behind Truman.

Table 10 parallels table 6 which was described previously. Table 10 was calculated by projecting how a candidate would have run in a particular area if that area voted exactly like the whole state. Then the difference between a candidate's actual showing and his projected showing was determined and that information is reported on table 10. For example, Carter in 1976 won 49 per cent of the statewide two party vote. If Chicago had given him only 49 per cent of its votes, he would have lost the city by 24,000. In fact, Carter carried the city by 425,000 votes, so Chicago deviated from the statewide pattern by 449,000 votes in favor of the Democratic candidate. Table 10 minimizes the impact of statewide candidate appeal and reveals the underlying support for one or the other political party.

Table 9

Actual victory margin* for Presidential candidates in Chicago, Suburbs, Downstate and statewide (1932-1976)

Year	Chicago	Suburbs	Downstate	Illinois Total
1932	249 D	39 R	240 D	450 D
1936	555 D	21 R	180 D	715 D
1940	298 D	140 R	62 R	96 D
1944	416 D	127 R	149 R	140 D
1948	316 D	192 R	89 R	34 D
1952	161 D	298 R	306 R	443 R
1956	42 R	450 R	355 R	848 R
1960	456 D	254 R	194 R	9 D
1964	675 D	61 R	277 D	891 D
1968	421 D	358 R	198 R	135 R
1972	202 D	625 R	452 R	875 R
1976	425 D	425 R	93 R	93 R

**Margins expressed in thousands of votes.*

Even a quick glance at table 10 discloses several crucial trends in Illinois elections. First, the city of Chicago has been favoring the Democratic candidate by about the same margin since 1960. This results from two opposing trends: the size of the Chicago vote has been declining, but the city's percentage of votes for the Democratic candidate has been increasing. These two opposite developments have coincidentally balanced each other, thus the absolute difference between the Chicago vote and the statewide vote has stayed about the same. Second, the Suburbs have become more Republican in terms of actual votes in every election since 1932. Again, this is the outcome of two other trends — the percentage difference between the Suburban vote and the statewide vote had remained remarkably constant, but the size of the Suburban vote has been increasing. The result of the steady Chicago vote deviation towards Democratic candidates and the increasing Suburban deviation towards Republican candidates is that Suburban Republicanism now effectively balances Chicago's base of support for the Democratic party. This means that the two parties now can be considered evenly matched in the six-county metropolitan area. The balance of power is Downstate, where the other 96 counties have regularly produced small deviations in favor of the Republicans.

The importance of this data should not be underestimated. Despite the success of a few overwhelmingly popular Democrats in the Suburbs in recent years (Alan Dixon carried the Suburbs in 1976, for example), the underlying base of party support for the Republicans is greater than ever, great enough to offset the Chicago base of party support for the Democrats. The Downstate vote is more closely contested and is likely to hold the balance of power in close statewide elections.

New geography and the future of Illinois politics: The Democrats

Chicago still carries for Democratic candidates for statewide offices by large margins. This bedrock Chicago vote is stable and dependable, but because of population shifts the city can no longer elect a Democrat to statewide office or carry a Democratic Presidential candidate. Popular candidates like Stevenson or Dixon can personally appeal to suburbanites or downstaters, but their vote totals must be viewed as exceptions rather than the forerunner of any trends.

The crunch of the new geography rests with an awareness of population shifts and how they translate into vote margins. The disproportionate power of Chicago Democrats in a primary could alter the best population ratio for a winning state ticket. Thus, Chicago Democrats must show restraint and maturity in dealing with the number of Chicago spots on a statewide ticket. In addition, Illinois Democrats must push for unity between the three geographical areas of the state. It would only serve the Republican party to

Table 10

Deviation of actual victory margins* for Presidential candidates in Chicago, Suburbs and Downstate from each area's "share" of statewide margin (1932-1976)

Year	Chicago	Suburbs	Downstate
1932	66 D	108 R	41 D
1936	249 D	123 R	129 R
1940	258 D	154 R	103 R
1944	353 D	149 R	203 R
1948	300 D	197 R	102 R
1952	343 D	211 R	132 R
1956	277 D	256 R	20 R
1960	453 D	257 R	197 R
1964	370 D	313 R	59 R
1968	462 D	318 R	149 R
1972	446 D	329 R	116 R
1976	449 D	393 R	57 R

**Margins expressed in thousands of votes.*

have Chicago isolated from the rest of the state or the target of anti-city Democrats from Downstate or the Suburbs. On the other hand, Chicago Democratic leaders must finally admit that they do not have enough city troops to win any statewide elections on their own.

Democratic leaders in Illinois must become *election oriented* and not allow past party feuds or slights make the party *primary oriented.* It is in Chicago and Cook County's interest to have a slate proportionate to the population. A Downstate-Suburban-led statewide ticket would have considerable appeal to Cook County suburban residents. Suburbanites in Cook County will probably cast close to 50 per cent of the county vote in 1978, and Republicans may be able to ride their country town pluralities to victory in future county contests. It is important to remember that because of the new Constitution, county sheriff, assessor, county board president and county commissioner races will be held at the same time as the statewide elections.

Illinois Democrats must stress state unity. Unity means that Suburban and Downstate Democrats are now true political partners and will in fact lead most statewide tickets. Unity means that Illinois Democrats will no longer have anti-Chicago candidates or Chicago dominated slates chopping each other up in brutal primary campaigns. Gov. Dan Walker's 1976 primary loss and Michael J. Howlett's 1976 election defeat show the folly of either alternative. Unity means that Illinois Democrats will give the voters *population-proportionate* slates based on where the voters live or are moving, and not *political-proportionate* slates based on traditional strength inside the party. Finally, unity means no individual will have the ability to push personal considerations ahead of the overall welfare of the Illinois Democratic party.

New geography and the future of Illinois politics: The Republicans

Since World War II, changing population patterns have bolstered the voting power of those parts of the state which favor the Republican party and have diminished the voting power of those regions which generally support the Democratic party. This is especially important in the growth of the Republican Suburbs and the decline of Democratic Chicago, but is also true of other areas of the state, notably the pro-Democratic southernmost region of Illinois. These trends are likely to continue for the foreseeable future.

Simply stated, Suburban and Downstate voters can outvote Chicago, and if political patterns remain unaltered that means Republican victories and Democratic defeats. It is not necessary for Republicans to improve their showing in Chicago — in 1976 James R. Thompson was beaten badly in the city while winning the biggest statewide victory in Illinois history. Gerald Ford received less than one-third of Chicago's vote, but still carried the state. As the data in this article has shown, the Chicago vote has become increasingly Democratic and increasingly different from the rest of the state. The Chicago vote has shrunk from almost half of the state vote in 1948 to about one-fourth in 1976. The population of Chicago is comprised of the same socioeconomic groups who support the Democratic party across the country, and they have become a larger portion of Chicago voters with every passing year. It is probably an insurmountable task for Republicans to improve their vote in Chicago in any substantial way. The few Republicans who have done well in Chicago have also run so well elsewhere that their showing in Chicago proves only that the city is not totally isolated from statewide appeal.

Thus, the Republicans need only maintain their current areas of strength. Recently, the Democratic party has made some dents in the Republican Suburbs and usually Republican areas across northern and central Illinois. In 1974 particularly, the shadow of Watergate and Nixon's resignation produced surprising Democratic victories in legislative and congressional elections. However, 1978 elections promise a better environment for the Republican party. President Carter's popularity seems to drop month by month, and, historically, the party out of the White House usually does well in non-Presidential years. Moreover, in 1978, the Illinois Republican ticket will be led by three of the most popular vote-getters the party has ever had. If the Republicans balance the needs of their traditional Suburban and Downstate supporters, they will achieve a unified effort with excellent victory chances.

Conclusion

The 1978 statewide and legislative elections present an historical opportunity for the Republicans to take advantage of the new political geography in Illinois and establish themselves as the majority party in the state for years to come. But the election also provides an opportunity for the Democrats to prove that they have adjusted to the new geography with candidates and issues which appeal to Suburban and Downstate voters. With the 1980 census and reapportionment for legislative districts just around the corner, the 1978 election results may shape Illinois politics for years to come.□

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By AL MANNING

Creation of statewide authority hits snag after snag after snag

State Board of Elections

Because the court found the board's members to be appointed in an unconstitutional manner, the State Board of Elections will have no members on March 15 unless the General Assembly passes a law establishing a new appointment method

FOR SIX YEARS the state's political leaders have wrestled with the idea of creating a statewide authority to administer elections. The attempt to establish a State Board of Elections has thus far been unsuccessful.

Delegates to the Constitutional Convention debated the proposal, and recommended a State Board of Elections be established. The Constitution was ratified by the voters in 1970. In 1973, the General Assembly implemented the Constitution by passing a law creating a board. Gov. Dan Walker vetoed the legislation, but the veto was overridden. The governor filed a lawsuit in 1975 challenging the constitutionality of the board, and in 1976 the Illinois Supreme Court ruled the legislature's method of appointing members was unconstitutional.

The first proposal for a central election authority was made by the late Peter Tomei, a delegate to the Constitutional Convention and chairman of its Committee on Suffrage and Constitution Amending. He suggested one person be designated as the state election official for the entire state. Another delegate, the late Betty Ann Keegan of Rockford, then proposed a larger board to be responsible for the general supervision of election laws. Keegan's proposal was approved by the delegates and ratified by the voters.*

*Alan S. Gratch and Virginia H. Ubik, *Ballots for Change: New Suffrage and Amending Articles for Illinois* (Urbana: published for the Institute of Government and Public Affairs by the University of Illinois Press, 1973).

AL MANNING
A political columnist for *The State Journal-Register,* he is a native of Springfield and was graduated with a B.S. in journalism from Southern Illinois University at Carbondale. He has written about politics and government in the capital city for the past seven years.

The purpose of the Board of Elections is to provide a central authority to establish and enforce uniform election practices.

Prior to the constitutional mandate, a committee of state officials was charged with overseeing the state elections. A State Certifying Board, consisting of the secretary of state, attorney general and auditor of public accounts was responsible for state elections until the 1940's when a State Electoral Board was established. The governor and the treasurer joined the other three elected state officials, and the governor was designated as the chairman of the State Electoral Board. In the 1960's, the chairmen of the state central committees of the Republican and Democratic parties were added to the State Electoral Board.

Under these operations, the day-to-day responsibility for administering elections fell to the Index Division of the Secretary of State's Office and to the local election officials. However, Con Con delegates thought Illinois should have one central authority. Twenty-nine other states have such an authority, and five of those are mandated by state constitutions. In Ohio, for example, the secretary of state appoints the election authority. In California, the appointments are made by the governor, attorney general, secretary of state and comptroller.

Finally, the delegates agreed upon the following language for the Illinois Board of Elections:

"A State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. No political party shall have a majority of members of the Board" (1970 Constitution, Article III, section 5).

The provision was adopted over the objections of the Chicago Democrats. As cited in *Ballots for Change*, Paul Elward, a spokesman for the group, correctly predicted that the even membership requirement "will cause a great deal of mischief."

The General Assembly debated various plans for implementing the Constitution before agreeing on a plan in 1973. Under the arrangement, the four legislative leaders would each nominate two persons for the board and the governor would appoint one nominee from each pair. The statute states:

"In the appointment of the first State Board of Elections the Speaker of the House and the House Minority Leader shall each designate 2 nominees to serve for a term ending June 30, 1975; and the President of the Senate and the Senate Minority Leader shall each designate 2 nominees to serve for a term ending June 30, 1977. All nominees to the first Board and all subsequent nominees shall be persons who have extensive knowledge of the election laws of this State. The Governor shall appoint to the Board one of the nominees of each legislative officer. The terms of all subsequent members of the Board, upon expiration of the original terms, shall be for terms of 4 years. Each member of the Board shall serve until his successor is duly appointed and has qualified" (*Illinois Revised Statutes,* 1975, Chapter 46, section 1 A-1).

Since a tie vote is possible with a board consisting of four members, the legislature determined that a tie would

be broken by means of a lottery. The statute provides:

"In the event there is a tie vote of the membership of the State Board of Elections with respect to proposed action of the Board or with respect to any issue requiring a vote by the Board, the clerk of the Board upon the direction of any 2 members who certify that there is a deadlock, shall select by lot the name of one of the members of the Board. The member so selected shall be disqualified from voting on the particular proposition and the remaining qualified members shall proceed to decide the proposition. The vote on any proposition decided pursuant to the tie-breaking procedure of this Section shall not be reconsidered nor shall any policy determined thereby be revised for 9 months except by unanimous vote of the members of the State Board" (*Ill. Rev. Stat.*, 1975, Ch. 46, sec. 1A-7.1).

Despite the apparent compromise worked out by the political parties in drafting the legislation, Gov. Walker vetoed the measure (S.B. 1198). In his veto message, the governor said a fifth member of the board — a political independent — should be appointed. He also questioned the constitutionality of the tie-breaking procedure.

"In appointing the membership of such a Board, the governor should not be limited to a restricted list of individuals," Walker said. "Rather, he should have broad discretion to seek out individuals having unswerving dedication to the election process. Moreover, the Board must consist of an uneven number of people, with a political Independent as the potential tie-breaker so that no party can create deadlocks which would frustrate the purpose of the Board . . . .

"Since the Board would have an even number of persons from each party — persons certain to be highly partisan — deadlocks could be expected if there were strong efforts to change local practices considered to be unfair or discriminatory. Under the bill, such deadlocks would be resolved by disqualifying one member through picking lots. Thus strong enforcement would be left strictly to chance. The most likely result would be political compromise preserving the status quo."

The legislature completely rejected the governor's reasoning. Delegate Keegan, who later became a member of the state Senate, urged the veto be overridden because the framers of the Constitution had never even considered that a political independent be appointed to serve on the Board. On October 16, 1973, the Senate voted 54-1 to override the veto. Six days later the House voted 158-4 to override and the measure became law.

The legislative leaders had to move fast to nominate their candidates because the new board was charged with administering the next election which technically began in six weeks with the filing of nominating petitions. Of the eight nominees, the governor picked the following: Don Adams of Springfield, chairman of the Republican State Central Committee; Frank Lunding of Chicago, former director of "Operation Eagle-Eye," the GOP election-watching organization; Michael Lavelle of Chicago, a loyalist of the late Chicago Mayor Richard J. Daley, who was involved in conducting elections in Cook County; and William Harris of Marion, chairman of the Williamson County Democratic Central Committee. Harris resigned January 12 upon appointment to the House to fill the vacancy created by the resignation of former Rep. Clyde L. Choate (D., Anna).

The legislative leaders and the governor were immediately criticized for nominating and appointing four persons with such partisan political backgrounds. The board itself came under intense criticism. For example: the board hired approximately 100 staff persons for the agency, and most of them were hired with political sponsorship at salaries considerably higher than found elsewhere in government. Next, the board knocked 500 candidates for local office off the ballot for not filing a required Statement of Economic Interest (the decision was overturned in *Scott* v. *Lavelle*). The clincher came when the board ruled Mayor Daley's political organization did not meet the definition of a political committee and thus did not have to comply with the state's Campaign Disclosure Act.

Finally, legal action was taken against the board. On July 7, 1975, Gov. Walker filed suit alleging the method of selecting members of the board and the method of breaking tie votes were unconstitutional. The governor's motives for taking action were questioned because the suit was entered after the Better Government Association filed a charge with the board that the All-Illinois Democratic Committee (one of Walker's political committees) did not comply with the state's Campaign Disclosure Act. The suit was filed to stop an investigation into the committee's finances. However, Walker pointed out that he had questioned the constitutionality of the board in his veto message, and he said it simply took time to get the suit filed.

The governor won the case. In November 1976, the Illinois Supreme Court ruled in *Walker* v. *State Board of Elections* that the method of appointing members was unconstitutional because it violated the principle of separation of powers. In ruling that the legislature cannot appoint members to the executive branch, the court cited Article V, section 9(a) of the Constitution:

"The Governor shall nominate and, by and with the advice and consent of the Senate, a majority of the members elected concurring by record vote, shall appoint all officers whose election or appointment is not otherwise provided for. Any nomination not acted upon by the Senate within 60 session days after the receipt thereof shall be deemed to have received the advice and consent of the Senate. The General Assembly shall have no power to elect or appoint officers of the Executive Branch."

In the opinion written by Justice Carswell Crebs, the court stated:

"The focus of the floor debates at the 1970 Constitutional Convention, insofar as they pertain to Article III, section 5, concerned the need for a central election authority and the relative merits of including reference to such an authority in the Constitution. Little thought appears to have been given to the particular manner in which Board members might be chosen."

The court also ruled that the lottery scheme used to break tie votes of the board was unconstitutional because policy would be decided arbitrarily.

Thus, six years of work in implementing the Board of Elections provision of the 1970 Constitution would have to be begun anew. The court noted the need to allow sufficient opportunity for legislative response, and the judgment does not become effective until March 15, 1977.□

State Board of Elections

Turn page for debate on what legislature should do

RONALD D. MICHAELSON ***contends that:***

Reprinted from *Illinois Issues,* March 1977

State Board of Elections

Board is fulfilling its mandate; accusations of partisanship are grossly overstated

CONTRARY to public belief, the State Board of Elections is alive and well. Only a Cassandra could say that all efforts to create and operate a State Board of Elections in Illinois have been an exercise in futility. Nothing could be more misleading. There is no need to "begin anew," as others are claiming, and to say that "the attempt to establish a State Board of Elections has thus far been unsuccessful," is a reckless statement not based upon fact.

It is true that the Illinois Supreme Court decision in *Walker* v. *State Board of Elections* means at least a major overhaul (by the General Assembly) in the method used to appoint the members of the board. The revised appointment process will likely produce changes in the membership of the board, even possibly increasing the number of board members, and this conceivably could result in the adoption of new policy directions for the agency. But it is a quantum leap of reason and logic to conclude that we do not already have a fair, effective and nonpartisan State Board of Elections.

Article III, section 5 of the 1970 Illinois Constitution mandates a State Board of Elections that "shall have general supervision over the administration of the registration and election laws throughout the State." The General Assembly subsequently passed enabling legislation which outlined an extensive series of duties and responsibilities for the agency (*Illinois Revised Statutes,* 1975, Chapter 46, section 1A-1*ff*). These powers far exceeded those previously held by the Index Division of the Office of the Secretary of State, since it was clear that there needed to be an aggressive central authority to establish and enforce uniform election practices.

RONALD D. MICHAELSON
Executive director of the State Board of Elections, he received a Ph.D in government from Southern Illinois University at Carbondale and is an adjunct assistant professor of public affairs at Sangamon State University. The views he presents here are his own and do not necessarily reflect those of the State Board of Elections.

Without question the State Board of Elections has already established an impressive record in carrying forth its mandate. For example, the following accomplishments represent entirely new ground already broken by the agency:

1. Preparation and dissemination of manuals of uniform instructions for judges of elections and handbooks for local election authorities, for all statewide races and most local elections.

2. Establishment of a highly trained field staff to assist local election authorities in the conduct of elections.

3. Promulgation of rules and regulations to insure the uniform interpretation of the State Election Code.

4. Investigation of complaints filed in the course of election proceedings, with reports of possible violations of election laws made to the appropriate law enforcement officials.

5. Adoption of a highly successful voter education program, which uses the "mock election" device to educate Illinois school children, including those at the high school level, on the basics of our electoral process.

6. Administration of the highly important Illinois Campaign Financing Act, which includes adoption of rules and regulations to implement the act, the establishment of public viewing facilities to review reports, workshops to educate the public regarding the content and procedures of this new law, and vigorous efforts (which have proven highly successful) to prompt compliance with the act on the part of all political committees and candidates.

7. Efforts to promote "problem-free" elections in Illinois (many sources labeled the 1976 general election as one of the cleanest and smoothest elections ever held in Illinois).

Although the above list represents only a sampling of what has been accomplished, there are other major initiatives currently in the planning stage:

1. Preparation of a legislative program designed to improve the administration of our election laws.

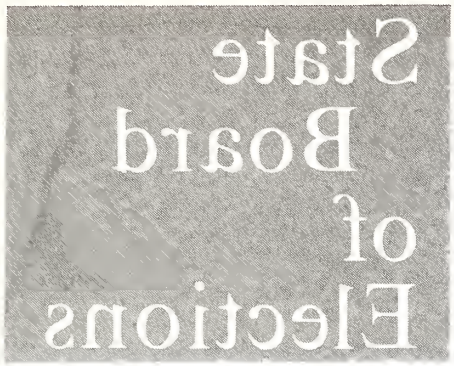
2. An analysis of the possible application of computers to the entire process of tabulating and certifying the results of elections.

3. Preparation of uniform forms and notices used by local election authorities to insure greater uniformity in the conduct of all local elections.

The point is that the State Board of Elections has been making substantial progress in fulfilling its constitutional and legislative mandate. Certainly there have been growing pains in its early life, but these are only natural in any new department. The agency has stabilized so that it can now claim a measure of pride in its accomplishments during the past three years.

Controversy is bound to develop in the General Assembly over the issue of how to restructure the appointment process. The topic of "elections" has always been a sensitive one for lawmakers and this will prove no exception. Should the governor have sole appointive authority or should the appointments be "shared" in some way by the constitutional officers? Should there be an odd-member board, with the odd-member as the "Independent" with no partisan background or interests (if that is even possible!)? Should board members be allowed to have partisan affiliations, or should they be prohibited from

Continued at the top of page 90.



CHARLES R. BERNARDINI ***contends that:***

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Major revamping of statutes needed to give board independence from politics

DURING THE Constitutional Convention debates over whether to delete any reference to the State Board of Elections in the new Constitution, Delegate Robert L. Butler of Marion presented the following argument in support of the board: "I have long felt that Babe Ruth wouldn't have set any home run records if he hadn't taken the bat and gone to the plate and swung it — I think if we don't defeat the motion to delete, we will be doing the same thing as taking the bat out of Babe Ruth's hands."

In retrospect, one wonders if Delegate Butler was aware that the Babe also set records for strikeouts as well as for home runs. If he knew, he kept it to himself so as not to needlessly discourage the other delegates. In any event, the board has since not only struck out, but has even been accused of "throwing" a number of games and has been suspended from action until new managers can be selected and new ground rules established. This article outlines the statutory changes which I feel are necessary if the board is to break out of its prolonged slump and avoid having its constitutional franchise permanently lifted. (Proposals are in italics followed by explanation and comment.)

1. The board should be comprised of five members, knowledgeable in election laws and procedures, appointed by the governor for five-year staggered terms, subject to the advice and consent of the Senate. One member, who would serve as chairman, should not have held office in, or been a candidate in the primary of or the nominee for elective office of, any political party during the preceding five years, and should be a person unaffiliated with either of the two major political parties.

Of the statutory changes needed, none is more important than the prescription of an odd-numbered board. The General Assembly and the governor must decide whether they want the board to have a realistic chance to carry out its powers and duties, or whether they want a situation in which deadlocks — and the consequent political compromise preserving the status quo — can be expected. As long as one political party, in effect, has a veto power over any significant action, who really believes significant action will ever be taken affecting that political party's interests? Public pressure to resolve deadlocks or to motivate action by the board simply has not been effective in the past, and there is no reason to believe it would in the future. A recent Illinois Legislative Council study of 13 states having independent statewide election boards with substantive powers indicated that only New York, Rhode Island and Illinois have an even number of voting members.

A fifth member, unaffiliated with either major party, would have prevented the spectacle of the board being unable to agree for a month this past summer on who its new chairman would be. A fifth independent member would also have prevented the arbitrary decision on the major governmental question of how elections for judicial vacancies would be structured in early 1974; or in what situations political committees would have to report contributions and expenditures, as occurred in September of 1974.

A sizable and growing body of Illinois voters do not consider themselves affiliated with either of the major parties, as evidenced by public opinion polls and primary turnouts. A case, both moral and legal, could be made that to deny participation on the board to this body of voters is unfair.

The proposal advanced here would allow members of the Senate, in their confirmation role, to view an individual's entire background, not merely the less-than-crucial fact of whether he or she voted or did not vote in one or two political parties' primaries in the past x number of years. They could determine whether such a person was truly "unaffiliated," or "independent," by taking into account voting records, political activities and any other factors they deem relevant.

2. The hiring of technical consultants, other than as full-time agency employees under the Personnel Code, should be prohibited, except as necessary for actual litigation or as hearing examiners.

The consulting contract abuses have been well documented. Among them: a $49,000 contract to a Chicago public relations firm to help the board's public information officer write news releases; well over $100,000 paid to the firm of the late Charles Barr, Republican state central committeeman, to perform "advisory, supervisory and lobbying" duties; over $35,000 paid to Andrew Raucci, controversial attorney long associated with Democratic "machine" politicians, for research and advice; fees paid to Cook County Clerk Stanley Kusper, Michael Lavelle's political sponsor and former boss, from the entity supposedly supervising his office.

No compelling reason exists for the board, which should be able to draw at no charge on the expertise of 102 county clerks, the Illinois Election Laws Com-

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CHARLES R. BERNARDINI
A member of the board of directors of Project LEAP (Legal Elections in all Precincts), and chairman of the Election Law Reform Committee of the Chicago Council of Lawyers, he is counsel to the Medical Specialties and Science Specialties Groups of American Hospital Supply Corporation. His views presented here do not necessarily reflect the views of those organizations.

Michaelson says Board has established its central authority and legislative struggle to meet court guidelines should not unduly affect ongoing activity of the agency and staff

engaging in any partisan activity (as is the case with all agency employees)? These and other questions form the heart of the issue.

It is arguable, however, that the whole issue of partisanship on the election board has been grossly overstated. A review of the roll calls during the three years of operation shows that *very few* issues have resulted in a 2-2 Republican versus Democrat deadlock. For example, the lottery procedure (held unconstitutional in *Walker* v. *State Board of Elections*) which was authorized by law to break tie votes on the board has been used *only five* times out of a total of approximately 400 votes taken by the board at its public meetings. And the last time the "tie-breaker" provision was used was back on July 7, 1975, and even that deadlock was not a Republican versus Democrat impasse!

As Justice Underwood pointed out in his dissent on the "tie breaker" ruling, the lottery method of breaking stalemates is not unique to the State Board of Elections, and the majority opinion cited no authority for its ruling. The 1970 Constitution in Article VI, section 3(b), provides a similar method of resolving questions of decennial legislative reapportionment. When the Legislative Redistricting Commission cannot reach agreement, the Supreme Court submits "the names of two persons, not of the same political party, to the Secretary of State," who thereafter "publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission." This provision, which was upheld in *People ex rel Scott* v. *Grivetti* (1971, 50 Ill. 2d 156) is "indistinguishable from the provision for

Bernardini says set per diem salaries for board members and limit their political activity to voting in elections. Open board hearings and give subpoena powers to board. Put board employees under Personnel Code and prohibit the hiring of consultants

mission and approximately 100 employees, not to mention board members who are supposed to be knowledgeable in election laws and procedures, to hire outside consultants — especially public or party officials — except where necessary in actual litigation matters or as hearing examiners.

3. The salary of board members should be set at $200 per diem up to a maximum of $22,000 per year.

The present salaries of $25,000 per year for the chairman and $22,500 per year for the other members — all part-time positions — tend to insure that the positions are given only to party professionals as rewards and incentives for faithful service. Only New York pays its state election board members more, and most states pay either modest per diems or merely travel expenses. If paid on a per diem basis, board members would be more likely to leave the day-to-day operations to the executive director, a situation which hopefully would result in less internal politics and more professionalism.

4. Members should be prohibited from engaging in any partisan political activity during their tenure, except to vote at elections.

The present statute includes this prohibition for board employees, but not for members. As recognized by the Illinois Supreme Court, the first loyalty of board members should be to the citizens of the state, not to a political party. They should not be amenable to political influence or discipline in the discharge of their official duties.

5. All board hearings should be open to the public. In the alternative, the burden of proof required of complainants in closed hearings should be statutorily established at a reasonable level.

The present statute allows closed preliminary hearings on complaints of campaign disclosure violations. The board has interpreted this statute in such a fashion that individuals with complaints must actually prove their case in detail at the closed hearing, without subpoena or discovery powers. Only then will such individuals be allowed to present their facts at a public hearing where those tools are available. The rationale offered by board member Franklin Lunding for this heavy preliminary burden of proof is that part of the board's job is to screen out irresponsible complaints, so a party's enemies cannot disrupt it by bringing endless random charges. The difficulty with this viewpoint is that it can and does effectively preclude investigation and public airing of embarrassing charges against political organizations (for example, the decision in 1975 that the Democratic Party of Chicago and of Cook County are not political committees).

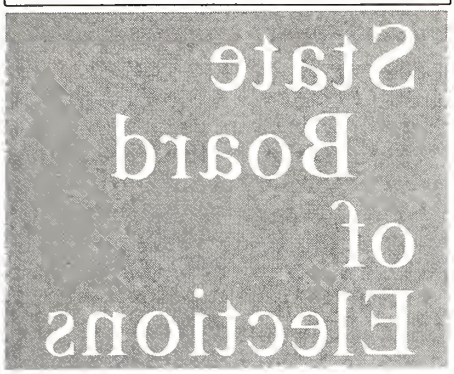
6. The board should have subpoena power to conduct investigations within the entire scope of its responsibilities,

resolving Board of Election deadlocks . . . ," according to Underwood. The lottery is also used to decide a tie vote in contested elections (*Ill. Rev. Stat.*, 1975, ch. 46, sec. 23—27) and to select persons for military service.

It should be clear that most issues relating to the administration of our election laws and needing board resolution do not have overriding partisan implications. Thus, it is somewhat hollow to contend that only the removal of "partisanship" from the board will "save" the agency. Partisan influences are not predominant anyway. It is also a matter of historical record that efforts to take a governmental agency "out of politics" often lead to a less effective and productive agency (witness the case of the U.S. Postal Service).

It is important that the legislative struggle to meet the guidelines set down by the court does not unduly affect the ongoing activity of the agency and its staff. The State Board of Elections must be supported in its continuing efforts to work toward the cleansing and refining of our electoral process in Illinois. In so doing we will build upon our already strong national reputation as a leader in this field.□

State Board of Elections



not solely with regard to the Campaign Disclosure Act, as is now the case.

7. The board should be statutorily required to appoint an executive director to administer its daily operations.

A full-time executive director, required by law to answer to all members equally, could encourage a less politically-oriented operation and would keep members out of hiring and other operational processes.

8. The employees of the board should be returned to the jurisdiction of the state Personnel Code.

As reported by *The State Journal-Register:* ". . . the board, which was meant to do an objective and professional job of supervising elections throughout the state, has turned its own agency into a veritable political jungle . . . . Employees are hired on a patronage basis, with the four members of the board dividing the patronage among themselves and keeping lists to make sure that each gets his share."

The board set up its own merit system (designed by an outside consultant) in the summer of 1976. A return to the state Personnel Code, however, would be a step toward permanently establishing a degree of professionalism on the board.

As Alan Gratch and Virginia Ubik point out in their study,* "A forthright and aggressive state board of elections could do much to open the election process and establish consistent and uniform practices throughout the state. It could neutralize the election machinery so that it does not work to the advantage or disadvantage of any particular group or political party." In many important respects, the board has not lived up to its responsibilities or to the hopes of its original proponents. Whether the legislature will live up to its responsibility — this third time around — to provide the necessary statutory surgery and whether the new governor will have the political courage to appoint the caliber of people who will provide the necessary postoperative care, will soon be determined.□

*Alan S. Gratch and Virginia H. Ubik, *Ballots for Change: New Suffrage and Amending Articles for Illinois* (Urbana: published for the Institute of Government and Public Affairs by the University of Illinois Press, 1973).

Reprinted from *Illinois Issues,* November 1977

By REP. DAVID ROBINSON

Should open primaries

THE Coalition for Political Honesty has announced its major effort to get the "open primary" issue on the ballot in 1978 as an advisory referendum. The law requires that we first obtain signatures from 10 per cent (625,000) of the registered voters in the state to put the question on the ballot statewide. If we can get the proposal before the voters (targeted for the November 1978 general election) and it passes, it will only be advisory to the General Assembly. But I am convinced that we will build the citizen pressure that will push open primary reform through the Illinois House and Senate.

Next step in reform

An open primary for Illinois is long overdue. The people phrase the reason time after time in almost the exact same words: "It's nobody's damn business how I vote." In poll after poll, 80 per cent of the people say they favor an open primary. They want to end the present system in which everyone is on file down at city hall or the county clerk's office for how they voted in the primary — Democratic, Republican or not at all. In this, the citizens have a better sense of the historical development of our political parties and the nominating processes than the professional party leaders who now stand in the way of the open primary.

Over the last 200 years the trend has been toward broadening the participation in nominating candidates, taking control away from the few and giving it to millions. The early political parties around 1800 developed the caucus method of nominations in which the party members of Congress nominated their presidential candidates and those in the state legislature nominated statewide candidates. The people had no say. Only those already holding political office made the decisions. In language that those fighting for an open primary echo today, the reformers of the 1830's called the entrenched nominating procedure a tool of bossism and special interests.

By the end of the 1830's the party convention replaced the caucus system as the way in which candidates were nominated. Delegates elected at the precinct level chose delegates to town and county conventions. These conventions in turn sent delegates to state conventions. At all of these levels, candidates were chosen. While this broadened participation from perhaps a few hundred to a few thousand, the convention proved just as susceptible to boss rule. The Progressives and Populists of the late 19th century charged that the delegates were bought and sold and that a few power brokers made decisions in the proverbial smoke-filled rooms, going into the convention only to have their deals rubber-stamped by the manipulated delegates.

The reformers of the early 1900's forced through a major revolution in the methods used to nominate candidates — the direct primary. The first use of the direct primary, in which voters directly cast ballots to choose candidates who would later run in a general election, occurred in 1842 when the Democratic party in Crawford County, Pa., used it to nominate local officials. In 1890 South Carolina became the first state to have a primary for governor and other statewide leaders. By 1917, all but four states used direct primaries. Within those few years, the power to nominate candidates was extended from thousands nationwide to millions. But just as in the past when nomination reforms of one era were found wanting in later years, so now there is a call to once again broaden the nominating procedure with an open primary.

The open primary is part of this historical continuum because we have found that forcing people to declare party preference excludes many from participating. And the fewer who vote, the easier it is for the political bosses to determine the outcome. The rule of thumb in Illinois Democratic primaries is simple: if under one million vote, the Chicago machine will dominate the returns. But if the vote is higher, it means that the uncontrolled are voting (in Chicago as well as in the suburbs and downstate) and an antimachine candidate has a chance. The more we do to open up the primary, the more we open up Illinois politics.

Success in other states

The arguments against this move are similar to those used by politicians in the past when the caucus and convention systems were challenged. "You'll weaken the parties," they say. "You'll allow outsiders to control our party decision." The best proof against these charges is that 10 states have tried the open primary, and it is immensely popular with the voters in those states: Michigan, Idaho, Minnesota, Montana, North Dakota, Utah, Vermont, Wisconsin, Alaska and Washington. Does anybody claim that the two-party system is weaker in those states than in one-party Chicago or DuPage County? A May 1975 report by the Legislative Council on closed primaries stated there is no evidence that the open primary

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REP. DAVID ROBINSON
A Democrat from Springfield serving his first term in the General Assembly, Robinson has been a leading advocate of the open primary and is on the board of the Coalition for Political Honesty.

By DON W. ADAMS

be adopted by Illinois?

BEFORE defending the closed primary system in Illinois, I must state the three premises on which my arguments rest. The first of these is the conviction that political parties encompassing diverse regional and social interests serve an important national purpose. Second is the belief that political parties can be effective only if their members are active in party affairs and give it philosophical direction. Third, the system must provide a means by which those who have no desire to be affiliated with an existing political party have the full opportunity to participate in the electoral process.

Political parties have played an important unifying role in our national political experience. Political parties evolved early in our nation's history because Americans became concerned about the influence of narrow interests and powerful institutions in our government. The forerunners of our two major political parties were the result of popular coalitions against groups that represented a threat to individual liberty and opportunity.

Threat to parties

No organization, and least of all a political organization, can function effectively if it cannot identify its membership. The leaders of a political party must know to whom they are responsible and accountable for the conduct of party affairs. The belief that a political party can remain viable when those who refuse to publicly identify with it are allowed to help choose its leaders and candidates is unrealistic. Any political party so emasculated would quickly disperse to find more effective kinds of political associations.

The most often heard argument in favor of the open primary is that more people would vote, thus making the nominating process more representative. The facts prove otherwise. The election results from the several open primary states throughout the nation show that there is no statistically significant difference in voter participation from closed primary states in the same geographical regions. In fact, a number of political studies have established that persons affiliated with a political party are much more likely to vote than those who are unaffiliated. Moreover, they are much better informed about the issues and the candidates.

A variation of the same argument cites recent national polls that show party membership declining and the numbers of those identifying themselves as political independents increasing. The argument goes that this ever-increasing group of independents not only desires but is entitled to participate in the nominating process of the parties. Yet these very same polls pointedly show that this decline is due, for the most part, to discontent with the parties themselves. It follows, then, that the argument made is that those persons who have failed to change the parties by remaining in them, should be allowed to do so by getting out of them.

The current movement for an open primary in Illinois is, in reality, a well-meaning but ill-considered attempt to change the two major parties. The movement is rooted primarily among those individuals who have been frustrated in their efforts to remake the existing parties. Instead of pursuing the reasonable alternatives of either changing the parties by patiently working from within them or forming new parties more to their liking (which is the way the changing political needs of our society have been satisfied in the past), many of these individuals seek goals that could very well destroy the system that has served us so well.

An insight into the attitudes of many who support the open primary is gained from the following observation in the 1974 report on open primaries made to the 78th Illinois General Assembly by the Committee on Elections:

> "More to the point, the testimony before the Committee indicated that many voters don't care about the potential impact of the open primary on political parties. They want to participate in primary elections, and they don't understand why, in order to do so, they must declare their 'politics.' Such voters don't share some of the values held by persons who regularly participate in political party activity. Lectures by partisans on the virtues of the two-party system serve only to reinforce their 'we and they' sense of alienation from party politics and its practitioners."

Right to know principle

The fundamental argument against the open primary rests on the belief that those who do not have the courage to take a public stand concerning their allegiance to a political party should not be allowed to participate in choosing its leadership. This is simply a manifestation of a very sound principle that holds that the decisions of public bodies should be made in as open an atmosphere as possible. Those who freely choose to call themselves Republicans, Democrats or anything else should have the right to know who is involved in selecting their party's leaders. It should

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DON W. ADAMS
Chairman of the Illinois Republican Party, he is a member of the Republican National Committee and member of the Illinois State Board of Elections.

No:

Doing away with the closed primary would undermine the unifying function of political parties and strengthen the fragmenting powers of special interests

be noted that Illinois election laws allow for the full participation in the general election process of those independent candidates who do not choose to affiliate with any party.

Doing away with the closed primary can harm our political system by making it much easier for demagogues, pandering to the emotional fervor of the moment, to win control of a party organization. The open primary requires no philosophical commitment from an individual to a political party's long-term goals — no commitment deeper than the one-time decision to participate in a party's nominating process.

Lost minority viewpoints

The open primary threatens our political system in yet another way. One of the strengths of the American system has always been the participation of minority viewpoints in the electoral process. One need not be much of a prophet to see that the open primary would allow any well-organized majority to take control of both political parties, thus effectively disenfranchising minority viewpoints.

A number of political writers have pointed out that Americans almost instinctively turn to special interest associations to achieve their political objectives. Our nation's political party system has traditionally been a unifying force bringing together a great many of these interests. The open primary will accelerate the weakening of our present system. This will inevitably lead to the increased strength of special interest groups with narrower goals and objectives. It has been said that the first rule of interest group government is to "look out for yourself." It would indeed be tragic if the weakening of the political party system in America leads us to government based on this selfish philosophy.□

Yes:

The open primary benefits people not party bosses and if the people approve it in the advisory referendum, the legislature may be hard pressed not to adopt it

system has led to party raiding in which members of one party cross lines to nominate the weakest candidate of the opposite party.

Under the system proposed by the Coalition for Political Honesty, voters would be limited to casting ballots in only one party's primary, but the choice of party would be made by the voter in the privacy of the voting booth. This is in line with the principle of secrecy of the ballot, and it meets the objections to declaring affiliation. The present closed system excludes those who fear that the public record of their party preference will be used by politicians to affect their employment, municipal services, business success or social standing in the community. Under the proposed open primary, the files which allow patronage abuses would be eliminated. Furthermore, under the proposed system, candidates will be promoted not just because of party loyalty but because they can appeal to a broader cross section of voters. The open primary promises expansion of the electorate, a more discerning and independent minded electorate and less boss control of politics.

Pressure on legislature

But the Illinois legislature has failed to approve open primaries. While over 60 House members of both parties sponsored open primary legislation in the last session, the political leaders of both parties were able to stop passage. A number of members said, in effect, "I am for the open primary but my county chairmen would have my head if I voted for it." The advisory referendum will be the countervailing force to those county and ward leaders. The voters' right to the advisory referendum is strongly protected by Illinois law (section 28-1 of the Election Code) and state Supreme Court decisions. The nonbinding referendum was used in the early decades of this century to press for women's suffrage, direct election of U.S. senators, abolition of prohibition and for introduction of the direct primary itself. Although it has fallen into disuse since the 1930's, the Supreme Court decision in *Payne* v. *Emerson* prevented any restraint on the right to an advisory referendum saying that "to deprive the electorate of their basic constitutional entitlement to expressions of opinion and to free elections cannot be countenanced." In pressing ahead with the petition drive for a referendum on the open primary, the Coalition for Political Honesty is revivifying a healthy tool of democracy, the referendum. When the open primary is endorsed by millions at the 1978 general election, how long can the legislature hold out?□

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By JAMES H. KLEIN

An analysis of candidate reports filed for the 1976 state Senate election

Campaign $$$ Who gets them?

WATERGATE produced more than the downfall of a president and the jailing of an attorney general. It also sparked widespread attempts to curb abuses at federal, state and local levels, abuses like those which occurred in the national election of 1972. More and more attention has been given to the connection between money and politics in the conduct of campaigns for public office. Between 1972 and 1976, new campaign finance laws were enacted by Congress and 49 states. These ranged from rules requiring disclosure of political finances to some modest experiments with public funding for political campaigns combined with limits on campaign expenditures.

In September of 1974, the Illinois General Assembly passed the Campaign Financing Act (Public Act 78-1183). It requires candidates and certain political committees, who receive or spend over $1,000 a year, to report contributions to the State Board of Elections. Several reports are required. Candidates must file annual reports, 30-day reports and 60-day reports. The annual report is filed in July and covers contributions and expenditures for the preceding 12-month period. The 30-day report is filed a few weeks before an election and covers contributions, but not all expenditures, for the period since the last report. The 60-day report is filed three months after an election and covers contributions for the period from 30 days before to 60 days after the election. Special reports must be filed for large contributions made during the month before an election.

The usual rationale for this complex reporting system is to discourage illegality or other abuses in the spending and raising of political money. The threat of public exposure is thought to be an effective deterrent. The reports also provide valuable information about the costs of democratic elections and the role that money plays (in conjunction with other variables) in getting and staying elected. Finally, the reports reveal the network of financially based obligations and pressures that politicians work under, given the dependence of our electoral system on private wealth.

> Running for the Senate is not a poor person's game: 63 candidates raised over $1.5 million, or about $24,000 each, competing for a job that pays a $20,000 annual salary

While reform has slowed as the fallout from Watergate has settled, it has by no means ceased. Congress appears ready to enact some form of public financing for congressional general election campaigns, and advocates are pushing for its extension to primaries. In Illinois, Common Cause seeks revision of the disclosure law to produce fuller and more detailed disclosure of the sources of campaign finances. Legislation has been introduced into the General Assembly that would implement public financing of statewide campaigns.

A starting point for assessment of this reform activity should be a more complete understanding of campaign finance under the status quo. In 1976 and early 1977, several political committees filed disclosure statements on behalf of candidates running for the Illinois Senate in November 1976. A good picture of the role money plays in the election of state legislators can be drawn by looking at these three sets of reports: the annual report covering the period July 1, 1975, through June 30, 1976; the 30-day report covering the period from July 1, 1976, through the thirtieth day before the November 2 election, and the 60-day report for the period from the thirtieth day before through the sixtieth day after the election. Unfortunately, expenditure data for the period is incomplete because full reporting of expenditures is required only in the annual report and not the interim reports. The expenditures summarized in this article occurred for the most part during the period ending June 30, 1976. Consequently, they pertain mostly to the primary rather than the general election campaigns.

Seventy-seven candidates ran for 40 seats in the Senate in the November election. Reports were filed on behalf of 63. Presumably, the 14 candidates who did not file neither accepted contributions nor made expenditures over $1,000 during any 12-month period and, therefore, were exempted from the filing requirement. The reports clearly show that running for the Senate is not a poor person's game. Sixty-three candidates raised over $1.5 million, or about $24,000 each, competing for a job that pays $20,000 a year in salary. While Republicans raised a total only slightly higher than Democrats, the average Republican candidate raised one-and-a-

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The author wishes to acknowledge the assistance of Lee Norrgard, executive director of Common Cause of Illinois, in retrieving the data from reports filed with the State Board of Elections.

half times as much as the average Democrat ($29,470 v. $20,441).

Table 1 indicates that while most money came in the form of direct contributions from individuals and groups or transfers-in from other candidates and political committees, over a fifth was generated by such traditional methods as testimonial dinners, cocktail parties, ticket sales and mass collections. A surprising amount, nearly a tenth, came in the form of loans, much of it from banks. Democrats relied more heavily on direct contributions, and Republicans were more successful with ticket sales, etc.

While expenditure data for the 18-month period is incomplete, it is likely that all of the reported receipts, if not more, were spent in the course of the campaigns. Almost half of it appears to have been spent in the March primaries or during the period ending four months before the general election was held. It appears, then, that reported receipts provide a good idea of the cost of running for the Illinois Senate in 1976.

Campaign sources

Who pays these costs? Table 2 provides a summary answer to that question, and several striking facts emerge. First, while the chief purpose of the reporting system is to deter abuse through public disclosure, the actual result of the law's operation is nondisclosure of the sources of almost half the funds contributed. Over 45 per cent came from sources which were not itemized by candidates in their reports. The law requires that contributors be identified only if their total contributions to the reporting committee, during the previous twelve months, exceeded $150. The exception permits widespread nondisclosure of the contributors.

This legal nondisclosure appears to be more extensive among Republicans than Democrats. The difference is open to various interpretations. Republican candidates may have been more dependent on small givers than the Democrats and, consequently, a larger proportion of their receipts fell within the legal exception. This interpretation is somewhat strengthened by the data on individual contributors who are identified. Democrats received a larger share from individuals who gave over $500 than Republicans, who, in turn, were more dependent on individuals giving in the $150-499 range. It is also possible that Democratic contributors were less adept at taking advantage of loopholes that may result from the law. For example, by carefully timing contributions over a four-year period, one might contribute nearly $600 to a campaign and still remain unidentified. This amount could be even greater if contributions were made to different campaign committees organized on behalf of a single candidate.

A second striking fact is the relatively heavy dependence of candidates on contributions from organizations and interest groups. Interest group money accounts for over a quarter of the overall total, about a fifth of the Republican total and over a third of the Democratic receipts. Illinois legislators appear to be more dependent on interest group money than members of Congress since only about 17 per cent of the campaign funds for the 1974 congressional elections came from interest groups. The difference may be largely due to the fact that in 1974, corporate contributions to federal candidates were illegal.

The two most important sources of interest group money are, as might be expected, business and labor. Business interests outspent labor by almost 2 to 1 in the Illinois Senate campaigns. Most of the business money went to Republicans and almost all the labor money to Democrats. The extent of candidate dependence on these traditional sources of campaign funds is better indicated by averages. Democrats on the average received $2,051 from business interests, while the Republicans were twice as dependent on business, receiving average contributions of $4,208. On the other hand, the average labor contribution to Democrats was $2,593 which dwarfed the Republican average of $61. In fact, less than a quarter of the Republicans reported receiving any labor money, while nearly all Democrats were backed by labor.

A third pattern which emerges from the reports is the relatively unimportant role which party organizations play in campaign finance. Only a ninth of the funds raised came from party coffers, although Republicans and Democrats differed considerably here. The former were three times more dependent on party organizations, receiving an average of $3,415 from Republican groups. Democrats received $1,131, on the average, from party organizations. These partisan differences may be somewhat overstated, however, since Democratic reports do no reflect the indirect but invaluable campaign assistance provided by Chicago ward organizations.

Reform argument

What does this brief look at the campaign finances of the 1976 state senatorial candidates suggest about further changes in the way Illinois

Table 1

Senate candidates' reported receipts and expenditures, Jul 1975 - December 1976

	Democrats		Republicans		Total	
Receipts	Amount	%	Amount	%	Amount	%
Total contributions and transfers-in	$535,970	70.9%	$436,300	56.9%	$972,270	63.9%
Loans received	80,440	10.6	47,540	6.2	127,980	8.4
Sales of tickets, mass collections, etc.	122,190	16.2	204,490	26.7	326,680	21.5
Other receipts (in-kind, interest, etc.) Less refunds	17,720	2.3	77,890	10.2	95,610	6.3
Total reported receipts	**$756,320**	**100.0%**	**$766,220**	**100.0%**	**$1,522,540**	**100.1%**
Number of candidates reporting	(37)		(26)		(63)	
Average receipts per candidate	$20,441		$29,470		$24,167	
Expenditures						
Expenditures on behalf of candidates	$241,600	65.5%	$205,200	65.8%	$446,800	65.6%
Personal services, salaries, etc.	70,430	19.1	81,030	26.0	151,460	22.3
Loans made	200	.1	2,340	.8	2,540	.4
Transfers out (other candidates, etc.)	56,510	15.3	23,400	7.5	79,910	11.7
Total reported expenditures*	**$368,740**	**100.0%**	**$311,970**	**100.1%**	**$680,510**	**100.0%**

**Total reported expenditures fall far short of the actual expenditures during the 18-month period because the law requires only partial reporting in the 30- and 60-day reports in conjunction with the election, i.e., only loans made and transfers-out were reported in these interim reports.*

regulates elections? On the face of it, it would seem that reforms promoting fuller disclosure should be considered. The aim of the 1974 act is disclosure of the sources of campaign funds to deter abuse and provide voters with some idea of the interests to which candidates are beholden. Yet the law fails to disclose the sources of almost half the reported receipts. This is due primarily to the relatively high threshold for disclosing contributor identity. The federal threshold is $100 and this is for campaigns where receipts greatly exceed those of state legislative races. Nondisclosure may also result from the loophole arising from the twelve-month cumulating period of the Illinois law.

An argument against lowering the threshold and extending the time period during which contributions from one source must be cumulated is the additional bookkeeping burdens which would be imposed on harried, nonprofessional campaign staffs. Recording and reporting large numbers of small contributions would be burdensome, but the law already requires that campaign treasurers maintain separate records showing the identity of and amount given by contributors giving over $20. Since this recordkeeping burden has already been imposed, disclosure of the records should be only marginally burdensome. If the threshold were lowered sufficiently, shortening or abolishing altogether the cumulation period could actually lighten the bookkeeping tasks considerably. Contributions could simply be reported as they occurred.

> The law fails to disclose the sources of almost half the reported receipts, due primarily to the relatively high threshold for disclosing contributor identity

A related argument against fuller disclosure points to the impracticality of reporting the sources of receipts from ticket sales, mass collections and other fundraisers of this type. But most of the undisclosed money came from direct contributors; less than half, or about one fifth of the total receipts, arose from unitemized sales and collections. Moreover, nondisclosure of most of these funds resulted from applying the $150 reporting threshold to sales in spite of more stringent recordkeeping requirements that the law already imposes.

Finally, one might argue that little would be gained by requiring fuller reporting. Yet if contributions running to several hundred dollars can be made from one source which remains unidentified and this type of contribution comprises a significant portion of some candidates' total receipts, are the deterrent and informational purposes of the law really being fully served?

Table 2
Sources of receipts reported by Senate candidates, July 1975 - December 1976

	Democrats		Republicans		Total	
	Amount	%	Amount	%	Amount	%
Partisan groups:						
Democratic	$ 45,250	6.0%	$ 0	0.0%	$ 45,250	3.0%
Republican	0	0.0	126,350	16.5	126,350	11.3
Total partisan	45,250	6.0	126,350	16.5	171,600	11.3
Ideological groups	2,780	.4	4,970	.6	7,750	.5
Professional groups:						
Education interests	40,910	5.4	6,250	.8	47,160	3.1
Medical interests	18,650	2.5	19,580	2.6	38,230	2.5
Other professional	6,180	.8	1,950	.3	8,130	.5
Total professional	65,740	8.7	27,780	3.7	93,520	6.1
Business groups:						
Insurance interests	1,200	.2	2,450	.3	3,650	.2
Construction interests	4,050	.5	2,850	.4	6,900	.5
Real estate interests	6,100	.8	8,960	1.2	15,060	1.0
Transportation interests	5,290	.7	4,880	.6	10,170	.7
Banking interests (including loans)	35,820	4.7	31,290	4.1	67,110	4.4
(Bank loans)	(29,000)		(25,150)		(54,150)	
Various businesses	23,440	3.1	58,980	7.7	82,420	5.4
Total businesses	75,900	10.0	109,410	14.3	185,310	12.2
Labor groups	103,720	13.7	2,250	.3	105,970	6.9
Law firms	11,500	1.5	1,810	.2	13,310	.9
Individuals:						
Registered lobbyists	200	*	950	.1	1,150	*
Individuals giving $500 or more	40,310	5.3	25,520	3.3	65,830	4.3
Individuals giving $150 - $499	47,860	6.3	62,860	8.2	110,720	7.3
Candidate to self (including loans)	50,090	6.6	28,160	3.7	78,250	5.1
(Self loans)	(44,480)		(20,890)		65,370	
Total individuals	138,460	18.2	117,490	15.3	255,950	16.7
Miscellaneous sources	840	.1	2,290	.3	3,130	.2
Unidentified sources	312,130	41.3	373,870	48.8	686,000	45.1
Total receipts	**$756,320**	99.9%	**$766,220**	**100.0%**	**$1,522,540**	99.9%

**Less than .1%*

Public financing

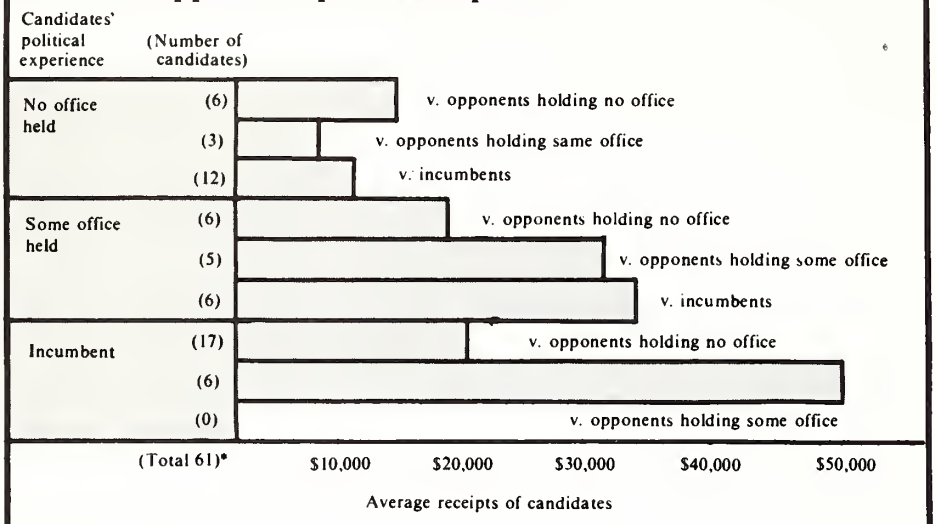
Another alternative is public financing of state elections in Illinois. The demand for public funding usually rests on two assumptions. First, if electoral politics depends upon private wealth, persons of modest means are practically excluded from full participation, unless they can attract wealthy supporters. Second, by depending on outside sources of wealth, candidates may feel more responsible to these private interests than to the broader interests of their constituents. In theory, public funding makes running for office closer to the grasp of the common man or woman while reducing entanglements with "special interest" money.

While the data from the campaign reports shows the heavy dependence of Senate candidates on interest group money, this alone probably fails to justify using taxpayers' money to support political campaigns. The reports do reveal the economic inequalities among candidates, and how these inequalities limit the choices of voters. Specifically, if the money available to candidates affects their chances of success at the polls, then fundraising ability, rather than the voice of an informed electorate, determines the outcome of elections.

Common sense indicates that campaign effectiveness is partly a result of the resources available to the organization. Money buys many of those resources, particularly in an age increasingly dominated by media efforts to

Figure 1

Average receipts of candidates by their political experience and their opponents' political experience



**Excludes three candidates who ran unopposed, and thirteen, with opposition, who did not file disclosure statements.*

influence voters. The reports filed by candidates for the Senate support common sense. Winners reported average contributions of $27,428 while the average loser reported having only $19,527 to spend. This 3 to 2 advantage of winners is probably closer to 2 to 1 when those candidates not filing reports are taken into account, if one assumes that nonfilers raised under $1,000. Only three winners were nonfilers in contrast to eleven losers, which significantly increases the spread between the contributions of winners and losers.

Incumbent advantage

Simply out-raising and spending the opposition does not assure victory. Several candidates for the Senate had considerably more money and still lost. Moreover, the tendency of winners to have higher levels of contributions to report may be in part a result of the fact that many contributors support candidates they perceive to be likely winners. Consequently, it may be more accurate to conclude that big money comes to many candidates because they are likely winners than to say that they are winners because their campaigns are well financed.

A factor that is frequently singled out as crucial in deciding elections is incumbency. Incumbent state senators who ran in 1976 were reelected at the rate of 93 per cent. Because of their electoral advantages, incumbents are prime beneficiaries of smart money betting on winners. The drawing power of incumbents is well demonstrated in the reports. Incumbents with challengers raised an average of $37,511 in contrast with their challengers' average of $20,012. Not only are challengers faced with a disability in terms of raising money, but they face another handicap. In order to overcome the electoral advantage of an incumbent opponent, a challenger must raise considerably more money to win than the incumbent. Victorious incumbents in contested elections raised an average of $26,926, while victorious challengers raised $45,735 on the average. Challengers who beat incumbents engaged in intense scrambles for funds which were necessary not only to counteract the "natural" advantages of incumbency, such as greater visibility and established staff, but to counteract the incredible fundraising power of incumbents threatened by defeat. Defeated incumbents raised an average of $54,880 in their attempts to stave off their opposition. The one consoling fact that emerges from this pattern of escalation is that these successful challengers, although outspent by powerful opponents, prevailed at the polls. But these are exceptions to the general rule that incumbents usually are reelected. The relationship between money and victory is further born out in contests pitting two nonincumbents for an open seat. Winners outraise losers at better than 3 to 2.

There are, however, other patterns in the data which suggest that it is an oversimplification to stress the advantages of incumbents over challengers as a starting point for thinking about ways of reforming the system of financing elections. A more complex yet more revealing explanation may depend on the political experience of a candidate rather than simply on incumbency. This approach is suggested by the fact that one group of nonincumbents actually reported raising considerably more than incumbents.

When nonincumbents are broken down into two groups — those holding no public office immediately prior to the election and those holding some elective or appointive office other than a Senate seat — officeholders report raising an average of $32,097, or nearly $4,000 more than incumbents on the average. By the same token, average contributions to nonofficeholders drop dramatically to $12,586. In other words, while challengers lacking much political experience are severely handicapped in their ability to raise the cash necessary to mount an effective campaign, politically seasoned challengers appear to possess that capability.

Not only is a candidate's experience directly relevant to fundraising ability, but so is the political experience of the opposition. Figure 1 illustrates what appears to be a two-fold effect on

Table 3

Political experience and candidate effectiveness

Candidates' political experience	Percent elected	Average percent of votes cast	(Number of candidates)
No Office Held	13	37	(30)
Some Office Held	55	55	(20)
Incumbents	93	66	(27)
			(Total= 77)

Candidates' political experience	Percent elected	(Number of candidates)
NO OFFICE HELD:		
Opponent held no office	50	(6)
Opponent held some office	17	(6)
Opponent an incumbent	0	(18)
SOME OFFICE HELD:		
Opponent held no office	83	(6)
Opponent held some office	50	(6)
Opponent an incumbent	29	(7)
INCUMBENTS:		
Opponent held no office	100	(18)
Opponent held some office	71	(7)
Opponent an incumbent	—	(0)
		(Total= 74)*

**Excludes three candidates who ran unopposed.*

In close races, extremely large sums were raised — twice as much as by big winners, who didn't need the money, and five times as much as by big losers, who couldn't raise it

fundraising potential resulting from the nature of the opposition. For politically inexperienced candidates, the stiffer the opposition, the harder it is to raise money. The effect of seasoned opposition on experienced candidates is precisely the reverse. The tougher the fight, the more money a professional pol can and does raise. A nonincumbent candidate holding some public office is much more like an incumbent in this regard than a candidate holding no public office.

Experience factor

The explanation for this pattern probably arises from the fact that seasoned politicians simply are more credible candidates than political newcomers. Having won any election, they would appear more likely to mount an efficient campaign, more likely to win and more likely to be an effective legislator. The first two of these three perceptions are borne out by the experience of the 1976 elections. Table 3 illustrates how experienced nonincumbents were much more likely to win than political newcomers and more likely to win by wide margins. While incumbents demonstrated their overall superiority, experienced nonincumbents were more like incumbents than neophytes in terms of electoral effectiveness.

Furthermore, while the table also shows that the chances of winning fell as the experience of one's opponent rose, professional politicians pitted against incumbents still had a one-in-three chance of winning while newcomers had little hope. As the stiffness of the opposition increases, so does the need for money to finance an effective challenge. Seasoned politicians are able to raise the extra money because they offer reasonable odds to their backers that they are betting on a winner. Newcomers cannot match those odds.

Table 4 illustrates clearly the dramatic impact which the intensity of the competition and the candidates' apparent effectiveness have on fundraising potential. In closely contested races in which candidates polled 45 to 55 per cent of the votes, extremely large sums were raised — twice as much as by big winners, who didn't need the money, and five times as much as by big losers, who couldn't raise it. Seasoned challengers, in tight races, raised more than incumbents. Even newcomers raised well above the average in these close races, although they were seriously disadvantaged in comparison with the pros. That disadvantage disappears, however, in races where candidates were victorious by wide margins. Apparently, their effectiveness as candidates was perceived by contributors apart from their political inexperience, and newcomers outraised incumbents in this category.

What do these patterns suggest about the need for public funding of campaigns in Illinois? If you stop after analyzing the fundraising abilities of incumbents and challengers, then public funding of legislative elections is an appealing way to give voters more meaningful choices through evenly matched contests. However, on closer examination, the situation is not so simple. Private campaign financing is widely available to nonincumbent professional politicians and relatively unavailable to amateurs. Giving public money to these nonincumbent professionals would only make them stronger. The key to political money is experience and all that it brings — exposure, know-how and credibility as a campaigner. Perhaps experience is a more defensible criterion than incumbency for determining whose campaigns are fully funded. Would it be an intelligent use of resources — private or public — to spend $20,000 on the campaign of a politically unknown Republican in Chicago's 23rd Legislative District, trying to even up the odds in a contest with Sen. Richard M. Daley, whose failure to file any reports suggests he raised and spent less than $1,000?

Table 4
Impact of political experience and competitiveness on campaign receipts

Candidates' political experience	Average receipts by percent of vote cast for candidate		
	Under 45%	45-55%	Over 55%
No office held	5,699* (14)	29,100 (4)	22,710 (3)
Some office held	21,854** (5)	50,990 (5)	26,693 (8)
Incumbents	(0)	50,731 (6)	20,893*** (18)

Omits nine candidates who did not file reports and presumably received less than $1,000.
**Omits two who did not file reports.*
***Omits three who did not file reports.*

New approach

Without suggesting that political experience should be the sole criterion for financial support (obviously, no public subsidy could depend on such a standard) or that public financing of campaigns is without merit, more study of the consequences of public campaign financing should be made where it is already used in other states and at the federal level. Have subsidies really opened up the electoral process to wider participation? Have subsidies made it possible for nonexperienced challengers to win or have they made it even easier for incumbents to retain office?

If subsidies are to be seriously considered, would they be better spent in primaries rather than general elections? Since most legislative districts are dominated by one party, primaries are where the real competition takes place. Or should a completely novel approach be taken? Rather than subsidizing the most expensive campaigns for higher office, presidential, congressional, gubernatorial, legislative, etc., perhaps the real need is on the local level — the entry point for most politicians. The higher one's aspirations and the greater one's experience, the easier it is to raise money. Perhaps, then, the next item on the agenda for electoral reform should be to make it easier for people to obtain the political experience necessary for campaign fundraising and election to higher office. The scope of such reform would not only involve public subsidies to local electoral campaigns but would encompass efforts to remove a variety of barriers to fuller participation by citizens in their government.□

By ORVILLE V. BERGREN

NO

Should teachers get i

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The right

THE QUESTION of whether or not teachers have or should have the right to strike cannot really be addressed without extending it to all public employees. And since such strikes are concerted actions by unions or associations of employees, the question of collective bargaining with public employees must also be examined.

There is nothing in the United States or Illinois constitutions giving any citizen the right to strike. Government employees, like all citizens, have the constitutional right to associate in groups to advocate their special interests to the government. But there is no requirement, in the absence of a statute, that such employee groups be recognized as bargaining agents for collective bargaining with those groups. The common law that came to us from Great Britain prohibited strikes by citizens against the crown — against the sovereign. Illinois courts still enforce that common law, and will enjoin public employee strikes if public employers have the political courage to seek such injunctions (*City of Pana* v. *Crowe*, Illinois Supreme Court 1974, 316 N.E. 2d 513). A strike by school employees has been found to be unlawful as against the public policy of the state (*Board of Education* v. *Kankakee Federation of Teachers,* Ill. Sup. Ct. 1970, 264 N.E. 2d 18).

The argument usually advanced in support of public employees' collective bargaining and right to strike is that government employees should have the same rights as employees in the private sector. Should they? Everyone who works for a living wants to have more pay and better working conditions. Government employee associations can and should be able to engage in political action and lobby the General Assembly on behalf of their members. And they certainly are doing that. But collective bargaining for pay and working conditions is another matter.

The difference between private versus public "management" is profound, insofar as the question of collective bargaining is concerned. Collective bargaining is a system of labor-management relations developed and designed for the private sector. It contemplates bargaining between equals on economic decisions. It is disciplined by the economic ability of the employer to meet labor demands and still stay competitive.

Public sector bargaining, on the other hand, involves political decisions which affect everyone. Government is a monopoly. There are no alternative sources of supply of government services, and there is no free market competition to keep government costs in line with other sectors of the economy. Public employee collective bargaining is also inconsistent with the concept of Civil Service, enjoyed by so many public employees, and tenure for educators. Private sector employees enjoy no such job security.

In order to function properly government must be sovereign. Collective bargaining tends to be destructive of governmental sovereignty. As the power of public sector labor leaders increases, the power of citizens to exercise self-government decreases. There is no room at the bargaining table for the taxpayer while political decisions affecting his taxes are being made. The plight of New York City today is a grim reminder of what happens when governments are dominated by public employee union leaders.

Collective bargaining does *not* improve the efficiency of government nor promote peaceful employer-employee relations, as consistently urged by proponents. The Public Service Research Council, a national not-for-profit research group of Vienna, Va., recently reported that a study of the 34 states with public employee collective bargaining statutes revealed that enactment of such statutes increased employee strife and caused an increase in strikes, although all but seven of the statutes prohibit strikes. In Michigan, there were 290 public sector strikes in the first six years following enactment of its collective bargaining statute (which prohibits strikes), compared to one strike in the seven-year period before the law. In Pennsylvania, there were 141 strikes in the first three years, compared to 23 strikes in the 10-year period before the law.

It is the nature of collective bargaining and maintenance of union leadership to ask employers for more than they are willing to give. This is followed by a hardening of positions, then the strike, depriving the public of services for which there is no substitute, then capitulation by the government employer and amnesty for illegal strikes.

Compulsory arbitration is sometimes suggested as a way of avoiding public employee strikes. But compulsory arbitration does not guarantee a "no-strike" end of a dispute with a militant union. More importantly, as applied to public employee collective bargaining, it places the power of decision regarding government costs and tax increases in

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ORVILLE V. BERGREN
President of the Illinois Manufacturer's Association (IMA), a group of more than 5,700 manufacturing and processing firms and plants in Illinois, he is a lawyer and former Marine Corps officer, who joined the IMA in 1965 from the A. O. Smith Corporation of Milwaukee. The IMA has been concerned about industry jobs leaving Illinois.

or do they have it?

to strike

By OSCAR A. WEIL

YES

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THE RIGHT of teachers to organize unions and to engage in collective bargaining is firmly based in the guarantees of individual freedom provided by the United States Constitution, as well as upon common law principles of freedom of association. There is no provision in either the U.S. Constituion or the Illinois Constitution for the suspension of the rights of individuals simply because they are public employees. If teachers cannot be denied the right to engage in union activities, then, inevitably, the Fourteenth Amendment guarantee of equal protection under law, as well as the Thirteenth Amendment guarantee against involuntary servitude, should enable them to establish collective bargaining relationships with their employers.

Denying teachers their basic rights and forcing them to teach by court order violates dramatically the principles basic to education in a free society, so much so that prohibitions against teachers' strikes are generally unworkable and unacceptable. To the teachers who care about academic freedom and their integrity as teachers, and to all those who care about intellectual freedom, there is no acceptable alternative to the right of teachers to collectively withhold their services. Those who believe teachers should be prohibited by law from striking and that disputes between teachers and public education boards over matters of educational policy should be submitted to a third party for arbitration, either do not understand or lack respect for the rights of teachers and for the integrity of the governing boards of public educational institutions.

Much progress has been made in the past 20 years in securing organizing rights for teachers. Until the late 1960's, most of the progress was made by a minority of teachers who defied the formal and informal rules against teachers' unions, and sometimes struck in violation of court injunctions. As a result, about 80 per cent of public school and community college teachers in Illinois are now represented by unions or associations in collective bargaining. University teachers are rapidly moving in the same direction. Three landmark court cases that affirmed the constitutional rights of teachers grew out of these union activities.

The most important of these court cases occurred in 1966 because of the firing of two members of the Illinois Federation of Teachers (IFT) in Dolton, located in south Cook County. The teachers alleged that they were fired because of union activities. As chief administrative officers of the IFT at that time, I directed that court suits be filed in both the state and federal courts. As had been true historically in Illinois courts, the suit in the circuit court of Cook County was unsuccessful. The suit in federal district court, the case known as *McLaughlin* (a teacher) v. *Tilendis* (the school superintendent), was also dismissed, but was appealed to the U.S. Court of Appeals for the Seventh Circuit. The district court judge ruled that joining a union was not a right protected for teachers by the U.S. Constitution. He said the act of joining a union could be reasonably construed by a school board as a threat to its authority. The Court of Appeals reversed this decision in July 1968 on grounds that the right to join a union is protected by both the First and Fourteenth Amendments. This was the first federal court ruling that union membership is a constitutionally protected right for teachers. Prior to that, teachers were often dismissed for union activities or for refusing to join the so-called "professional organizations," the Illinois Education Association and the National Education Association. The associations enjoyed favored status because they were controlled by school administrators, and because they opposed collective bargaining. The court ruling in the *McLaughlin* v. *Tilendis* case was a major blow to the elaborate defenses against union organization of teachers.

A second important court case, that helped to protect teachers in their union activities, grew out of the dismissal of a teacher in Lockport High School. The teacher, Marvin Pickering, had written a letter to the editor of the *Lockport Herald* in which he criticized harshly the school board's management of school district financial affairs. He was dismissed on grounds that his letter had harmed the reputations of the school board and administration, and that many of the statements in the letter were not true. Pickering's appeal of the board's action was pursued unsuccessfully in the state courts during the same time as *McLaughlin* v. *Tilendis* was developed in the federal courts. The IFT then appealed the case to the U.S. Supreme Court (*Pickering* v. *The Board of Education*). Interestingly, the Will County Circuit Court judge had said in his ruling that Pickering had been properly dismissed because a teacher "has no

Continued at the bottom of page 102.

OSCAR A. WEIL
Presently legislative director for the Illinois Federation of Teachers, an organization representing 50,000 elementary through university level teachers and other workers, he taught at the high school and community college level for nine years and served as president of a local IFT union for four years before joining the staff of the state organization in 1963 as first executive secretary and then executive director.

NO

Bergren says: "Increasing public sector bargaining and strikes in Illinois will mean greater costs of state and local government"

Continued from page 100.

the hands of the arbitrator, removing the voter-taxpayer even further from those political decisions.

Illinois, although without a collective bargaining statute (except in special situations, such as the Chicago Transit Authority and Regional Transportation Authority), already has had considerable public strike activity. In 1974, 781 of the 6,386 government units in Illinois were engaged in collective bargaining, despite the lack of a statute. Most of the units were school districts. Gov. Dan Walker's Executive Order No. 6 of 1973 extended collective bargaining to state employees under his jurisdiction. Illinois has been averaging 17 public sector strikes a year in recent years. But things can get worse. If history in other states teaches anything, a statute providing for compulsory collective bargaining for all state and local public employees in Illinois will greatly increase union organizing and strike activity, whether or not strikes are prohibited.

Increasing public sector bargaining and strikes in Illinois will mean greater costs of state and local government. State and local taxes, the combination of which now makes Illinois' taxes seventh highest in the United States on a per capita basis, will inevitably go higher. The pressures to shift more of the tax load to industry will increase.

Although taxes on manufacturers are ultimately paid by consumers, the taxes and other state-and-local government-imposed costs of a manufacturer must permit him to compete with out-of-state competitors. If they do not, the Illinois manufacturer may have to move or ex-

YES

Weil says: "Without the right to strike, unions cannot represent their members effectively and education will suffer in competition with other interest groups"

Continued from page 101.

right to criticize his boss." In 1968, the U.S. Supreme Court reversed the position taken by the Illinois courts and ordered Pickering reinstated in his job. In so doing, the court said that a teacher could not be fired for exercising free speech rights unless it could be shown that he had made statements that were "knowingly and recklessly false."

A third case of vital importance developed from efforts by the Chicago Teachers Union to establish a collective bargaining relationship with the Chicago Board of Education. Unlike other states, where public school teachers in the largest cities were in the forefront of initial efforts to win bargaining rights, Chicago had lagged somewhat behind smaller school districts in Illinois, such as East St. Louis, Granite City, Kankakee, Cicero, and Proviso Township. The Chicago Board of Education, like most school boards and other public employers, had maintained that it could not enter into a bargaining relationship with a teachers' union in the absence of a law specifically authorizing it to do so.

Finally, however, in the fall of 1965, the Chicago board authorized an election among the teachers to choose a bargaining agent. But a suit was filed in Cook County Circuit Court by James Broman, an official of the Illinois State Chamber of Commerce, for the purpose of blocking the election. Broman was joined in the suit by the Chicago Division of the Illinois Education Association. Defendants were the Chicago Board of Education and the Chicago Teachers Union. Ironically, Broman simply used a warmed over version of the board's old argument.

Cook County Judge Cornelius J. Harrington dismissed the suit and ruled that the Chicago Board of Education did have the authority to bargain exclusively with a union of its employees. The decision was appealed by Broman and the Education Association, but the Appellate Court upheld the ruling in the spring of 1966. More important, the court stated emphatically that, in the absence of a statute, public employers in Illinois have the authority to recognize unions for collective bargaining. The ruling was appealed to the Illinois Supreme Court, but was allowed to stand, becoming, as it remains today, the controlling law on the subject.

These court victories were important because they fostered organizing and bargaining successes of local unions, and also because they strengthened the resolve of IFT leaders to oppose any effort to deny or limit the rights of teachers.

On perhaps the most vital issue of all, the right to strike, progress for teachers has been agonizingly slow, at least insofar as the Illinois Supreme Court is concerned. In 1965 the Illinois Supreme Court ruled, in the *Redding* v. *Board of Education* decision, that public school employees do not have the right to strike. More recently, the court ruled, in *City of Pana* v. *Crowe*, a case which

pand elsewhere. Illinois already has serious business climate problems. Since 1969, this state has had a *net* loss of more than 202,000 manufacturing jobs, a drop of almost 15 per cent, according to the Illinois Department of Labor. Most of the jobs are going to southern states. None of them, from Texas to Virginia (except Florida), have public sector collective bargaining laws. In fact, North Carolina specifically prohibits collective bargaining with state and local employees.

Some states provide for collective bargaining only for teachers. However, because of the number of teachers and others in the educational establishment, and the fact that education is normally the largest item of state spending, the threat to state costs and taxes is great despite confining the statute to teachers. In fact, the growing power of teacher unions is little short of awesome. The National Education Association (NEA) has 1.8 million members and took in $200 million in 1974 directly and through its affiliates, much of which went for political action. Most public employee strikes involve teachers, and that includes Illinois.

Catharine Barrett, then president of the NEA, said, "We are the biggest striking force in the country and we are determined to control the direction of education . . . . We will need to recognize that the so-called basic skills, which currently represent nearly the total effort in the elementary schools, will be taught in one quarter of the present school day. The remaining time will be devoted to what is truly basic . . . war, race, the economy, population and the environment." What about the authority and responsibility of school boards, elected by the people to make such decisions? What does such a trend mean for self-government and democracy?

The vast majority of public employees are conscientious and dedicated Americans. None of the above remarks should be interpreted as implying any sinister conspiracy on the part of organized public employees. But the nature of collective bargaining and union leadership, and the history of public employee union activities, serve to validate the conclusion that Illinois does not need and should not have a general statute providing for compulsory collective bargaining with organized public employees. As to the right to strike, if there is collective bargaining, there will be strikes, whether or not they are legal.□

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grew out of a strike by city employees, that the state Anti-injunction Act of 1925 (*Ill. Rev. Stat., 1975,* Chap. 48, sec. 2a), which prohibits the issuance of court injunctions in collective bargaining disputes, does not apply to strikes by public employees. In a majority of the more than 70 strikes by IFT unions over the past 18 years, courts have issued injunctions against unions even though no Illinois statute prohibits strikes by teachers.

Over this period, teachers have proven that their unions can influence the allocation of money at the state and local level. Contracts negotiated by IFT locals have given teachers a voice in many matters of educational policy. Academic freedom has been strengthened. Teaching conditions have been improved by negotiated reductions in class sizes, increased time for planning, and by the employment of more teachers to expand programs in art, music, physical education, and education for the handicapped. Average teachers' salaries in the elementary and secondary schools increased from about $5,000 in 1960 to nearly $14,000 in 1976.

In 1969, twelve IFT local unions conducted strikes. Many of the issues were non-economic, but demands for reductions in class sizes, more time for planning and expanded services to students were expensive. Contract settlements by IFT local unions in 1969 provided salary increases averaging 10 per cent. As an example, Kankakee teachers struck in May of 1969. The strike was bitter, with the school board using every device possible, including a court injunction, fines and jail sentences. The teachers persisted and the strike settlement provided salary increases ranging from 13 per cent for the most experienced teachers to 16 per cent for beginning teachers. The school board also agreed to hire 8 per cent more teachers and to provide improved insurance benefits and funds for teaching supplies.

Pressure from bargaining by teachers with local school boards caused demands for more state aid and increased pressure for enactment of the state income tax.

Without the right to strike, unions cannot represent their members effectively and education will suffer in competition with other interest groups. During the period from 1960 to 1973, the percentage of the gross national product (GNP) devoted to education increased from about 5.2 per cent to 8 per cent. It was in this period that teachers established collective bargaining in education. But a combination of aggressive postures of school boards in bargaining, the use of court injunctions against teachers' strikes, and the refusal of political leaders to allocate more money for instructional services has leveled the percentage of the GNP devoted to education to around 8 per cent.

Because of inflation, teachers' salaries have increased at about 5 per cent a year, while other operational costs of schools and colleges increased at an annual rate of 10 or 12 per cent. In the school year 1976-77, salary schedules have been frozen for nearly a third of public school teachers at 1975-76 levels, while other operational costs have continued to rise at the same rate as in the general economy. This is true partly because workers in the construction industry, manufacturing, transportation, communication, and other segments of the economy have demanded and bargained fair increases in wages. Academic employees in the state's university system have been especially hard-hit by their unfavorable legal status. The state's university teachers received only a 2.5 per cent salary increase for the 1976-77 academic year, supplemented by another 2 per cent added in December 1976 by the General Assembly's override of the governor's reduction veto of university appropriation bills.

Most of the powerful groups and individuals who oppose collective bargaining and right-to-strike legislation do so for economic reasons. Public employers, they argue, may not be able to raise the money necessary to pay negotiated salary increases. But the real reason is that they are opposed to education having a bigger share of the economic pie. As with other rights and liberties that have been secured by teachers in the long struggle to establish unions, the right to strike must inevitably gain the protection of Illinois law.□

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By JOYCE E. KUSTRA

Full funding and the resource equalizer formula

State aid to schools

ONE OF THE most quoted sentences from Illinois' 1970 Constitution is the statement, "The state has the primary responsibility for financing the system of public education" (Art. X, sec. 1). Since 1970, the state's share of financing elementary and secondary education has climbed from 30 per cent to almost 50 per cent and education has become one of the state's heaviest funding responsibilities. Legislators, teachers, and just about everyone interested in the education of the children of Illinois have debated how much money the schools need, how much the state's sagging budget can bear, and how the funds should be distributed among the state's school districts.

In 1973, the complex, controversial "resource equalizer formula" was adopted and became the primary method used to compute how much money a district will get from the state. The Illinois Office of Education has determined that it takes an average of $1,260 a year to educate a child, and the formula is designed to equalize the money available to all of the state's students by equalizing the value of resources (taxable property) in the state's economically diverse school districts. Equal access to education has been an issue in several states where school financing systems were similar to the method used by Illinois before 1973. In those states, the courts usually found that funding formulas denied equal access to quality education. When a wide range of taxable wealth dictates the amount of money available to educate students, it follows that an equally wide range will exist in the distribution of the funds and the quality of education. The U.S. Supreme Court, however, did not endorse these findings when it declared that the Texas education system, although it might be inequitable, was not unconstitutional. It left the decision to change unfair school aid systems with the states.

JOYCE E. KUSTRA
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Strayer-Haig plan

In 1973 Illinois revised its school aid formula in response to the equal access argument heard around the country. The new law added a second alternative for computing a district's share of the state's education dollars. The original plan was the 50-year-old Strayer-Haig formula (named for its authors in the state of New York where the plan originated). It was designed to guarantee every school district a "foundation" level for providing adequate education of each pupil. All districts would have a financially equal starting point, although the plan ignored the local disparity in wealth in the local districts' ability and willingness to add to that base. In its first year (1927) the foundation level was $34 per pupil from state and local funds. The bulk of education funds came at the local level. In 1973, the Strayer-Haig system guaranteed a foundation of $520 per student. By this time, however, several other stipulations had been incorporated to account for special needs, so many students were actually receiving more. This practice is known as "weighting," or counting individual students more heavily to increase the district's state aid.

Under the Strayer-Haig plan, high school students, whose education was judged to be more costly, were weighted at 1.25 (for every $1 given at the grade school level, its value was $1.25 at the high school level). Also a larger share of the state's funds was directed to poorer districts by allowing them an 8 per cent "add-on" (this figure has been gradually increased to the current 25 per cent). Another boost to poorer districts is a "density bonus" which was added for districts with more than 10,000 students. This provision expired in 1974 on the premise that density and poverty aren't always related and was replaced by an extra .45 weighting factor for Title I children (those from families with annual incomes of $3,000 or less), a designation used in the Federal Elementary and Secondary Education Act of 1965 to aid impoverished families. These weighting factors are incorporated into the final student population figure of a district to come up with what is called the weighted average daily attendance (WADA).

In spite of these provisions, the Strayer-Haig plan does not alter the fact that a wealthier district can add to the "foundation" and thus provide a better education for its children than a poorer district. As a result, the old plan was actually a favorite of a few wealthier school districts who were reluctant to give up favored status. Because they found that they fared much better by computing under the old method, the legislature worked out a compromise by giving the local districts the choice of receiving aid under either plan rather than scrapping the Strayer-Haig formula. Only 165 of the state's 1,019 school districts file for state aid under the Strayer-Haig plan and receive only about 1 per cent of the state school aid funds.

Common School Fund

The Common School Fund dispenses approximately 80 per cent of the education dollars in general state aid through the mechanism of the resource

equalizer formula. Additional aid is given to local districts through categorical grants, that is, grants for specific needs such as special education. Aid from the Common School Fund, however, is by far the largest source of state education funds, and the formula is the way the amount of these funds is determined.

The formula is based on three factors: tax rate, assessed valuation and pupil attendance. The basic principle undergirding the formula is that state aid should be based, not on a district's property value, but on the willingness of a district to tax itself. The state guarantees to equalize assessed valuation (thus allowing poorer districts to compete for funds with the wealthier), so, in effect, state aid will increase with an increase in local tax rate, and any district taxing at the maximum should qualify for $1,260 per student in weighted average daily attendance (WADA).

Tax rate ceilings

The local taxing effort varies from district to district and is totally controlled by the district. The state has set a ceiling on the tax rate it will accept in computing the formula. The variance in the ceiling for the three kinds of school districts — grade school districts, high school districts and unit districts with students from kindergarten through grade twelve — makes it easier for some to get state money than for others. This is especially true for the high school districts whose maximum tax rate is 1.05 (or $1.05 per $100 of assessed valuation). The state's high school districts, which benefit from a stipulation which says they do not have to seek voter approval to raise taxes, are already taxing at or above this maximum (the local tax levy which exceeds the ceilings cannot be used in computing the district's state aid, but does generate more local property tax revenues). The two other types of districts, however, have a much harder time raising their tax rates. Grade school districts must tax at 1.90 per cent to receive maximum benefits under the formula ($1,260 per student). The third type of district, unit districts, have a 2.90 ceiling. Both grade school and unit districts must seek voter approval to raise taxes to the maximum rates. In 1976, legislators dealt with this problem by lowering the previous limits of 1.95 and 3.00 for grade school and unit districts respectively to the current 1.90 and 2.90. This change was part of a package of six school aid revisions, four of which altered the formula. Chicago's schools fall under regulations contained in a separate section of the School Code. The Chicago system has sufficient taxing power, without voter approval, to levy the taxes necessary for maximum benefits under the formula.

Any amount a district levies beyond the maximum, as mentioned above, cannot be used to calculate its state aid. Until the 1976 revision, districts whose rates were above the ceilings were required to "roll back" gradually to the ceilings imposed by the state, that is, to actually lower their tax rate. The 1976 provision eliminated the "roll back," thus allowing districts to tax themselves higher at the local level without increasing their state aid. Most of the districts now taxing beyond the state limits are wealthier suburban Cook County districts.

A maximum tax rate would not do much good for a school district with a relatively low property value to tax if the state did not guarantee a certain level of assessed valuation. The formula is based on the value of all property within a school district. This is where the districts with low property tax bases get a boost. The state assures a school district a yearly sum equal to what the local tax rate would raise if its assessed valuation per pupil was equal to the level guaranteed in the formula. The state has set the guaranteed property values for each student in weighted average daily attendance (WADA) at $66,300 for grade school districts, $120,000 for high school districts and $43,500 for unit districts. The guaranteed level for grade school and unit districts was raised last year by the General Assembly in the same law which lowered the tax rate ceilings of these districts. Previously the levels were $64,615 and $42,000 respectively.

> The state has set a ceiling on the tax rate it will accept from local districts when computing the formula

Title I designation is the feature which means the most to inner city districts when computing their share of state aid under the resource equalizer formula. The Title I provision plays a greater role in the new formula than it does under the Strayer-Haig plan. According to the 1973 formula, students designated as Title I eligibles by the Federal Elementary and Secondary Education Act are weighted on a sliding scale (zero to .75) to account for the concentration of Title I students in a district. A local school district with the same proportion of Title I students as the state (18.2 per cent), could count on .375 per cent extra weighting for each eligible student. As a district concentration exceeds this 18.2 per cent statewide proportion, its weighting increases in relation to the concentration of Title I students up to the maximum of .75.

Attendance calculations

The number of students in a district is calculated on the basis of average daily attendance rather than enrollment as an incentive to keep attendance high. With the special weightings designed to favor poorer children, the weighted average daily attendance (WADA) of a district is the student headcount used in computing state aid. Because many state schools are experiencing drastic declines in enrollment, WADA was also an issue in the 1976 legislative session. Arguing that these declines don't always mean a corresponding decrease in costs, school administrators called for a means of "cushioning" the financial impact. They received the "cushion" in a state law which allowed a district to use the higher of two WADA figures — either the present year's attendance or the average attendance of the three previous years. This average was a welcome alternative to those districts which felt they might have to make equally drastic cuts in programs for the remaining students.

As an example of how these three factors produce a district's share, take a sample unit district with a total assessed valuation of $200 million, an operating tax rate of 2.80 and WADA of 10,000 students. This makes the assessed valuation per pupil $20,000. This figure is deducted from the guaranteed assessed valuation figure of $43,500, leaving $23,500 to be multiplied by the

2.80 tax rate, then by the 10,000 WADA. The total is $6,580,000 or $658 per student. The local tax rate would produce $560 ($20,000 x .0280). Thus the district would receive the total of the local and the state share, $1,218 per student with the maximum of $1,260 allowed by law. If the sample district raised its local taxes to the 2.90 ceiling, it would receive the maximum.

The resource equalizer formula was also changed in 1976 to aid more rural districts by allowing districts to include taxes on school bus transportation in their operating tax rate. Rural districts did not gain as much from the 1973 reform as did school districts in the large cities and in the suburbs. This is because of the higher property values, lower tax rates and smaller concentrations of Title I eligibles in the rural districts. The inclusion of the transportation tax and the lower tax rate ceiling for unit districts, both effected in 1976, attempted to correct this inequity.

The law which was the vehicle for changing the school aid formula in 1976 also included two more provisions not affecting the formula. The first reduced by $24 million the $55 million penalty Chicago schools had incurred for closing early in spring 1976. The second was a "hold harmless" provision, a one-year-only measure to protect a district from losing money for fiscal year 1977 because of the formula changes. It guaranteed the district would get at least the amount it had counted on before the changes.

The 1976 legislative package of formula changes fell victim to political squabbling between the governor and the legislature, a development which left local school officials uncertain as to how much money they could count on for the school year. After the General Assembly failed to pass a tax acceleration package proposed by Gov. Dan Walker (which he estimated would bring in an additional $95 million this year), the governor decided to give the legislators one more chance in the fall session. He said he could only afford to make the formula changes effective immediately if the General Assembly would reconsider his tax speed-up measure and pass it. Finally in the fall session, the legislature approved a portion of Walker's tax plan in return for his signing the formula changes.

Phasing in full funding

As originally designed in 1973, the resource equalizer formula would have been fully funded in the 1973-74 school year, fiscal year 1974, ideally providing $1,260 for every student in WADA where the local district chose to tax itself at the maximum. But because of the demand this would place on the state treasury in a single year, the plan was

State aid to schools

The money just isn't there

STATE SCHOOL finance legislation was termed a "Christmas tree" last year because it had so many amendments hanging from it. Besides making substantial changes in the school aid formula, these amendments represented battles between political and regional factions over an amount of money for state school aid which was considerably less than had been anticipated when the formula was approved in 1970.

This year there'll be a lot of tinsel but not much in new money for schools. The money situation is again tight, with Gov. James Thompson's budget calling for only $75 million in new education spending, $150 million less than what the Illinois Board of Education said was needed. With the governor and the General Assembly attempting to avoid a general tax increase this year, most of the proposed legislation on school funding have been piecemeal efforts.

"The reality of the situation is that we can't fully fund this year because of limited funds," said Sen. Arthur Berman (D., Chicago), "in changing the formla we'd just be shuffling around the same limited dollars." Berman, chairman of the Senate Elementary and Secondary Education Committee, predicted a "rough time" for schools during this year's session.

Most legislators are hesitant to propose changes in the school aid formula itself, with some looking for ways districts can generate more money locally.

A measure introduced by Berman would not increase funds but would alter the method of payment to school districts. S.B. 293 provides for "school districts to receive full entitlement" for 10 months, from August through May, Berman said. The amount of the last two payments would depend on how much money was left for schools. The bill is designed to help districts overcome cash-flow problems. However, the bill is opposed by the Thompson administration which sees it as a serious threat to the state's ability to pay bills throughout the year. Berman said the office of Comptroller Michael Bakalis, a Democrat, supports his bill and does not foresee a dangerous cash drain for the state.

Rep. J. Glenn Schneider (D., Naperville), chairman of the House Elementary and Secondary Education Committee, is sponsoring H.B. 694, which would extend to fiscal 1978 the practice of making quarterly payments to districts for special education and transportation. A similar measure was passed last year, but it was in effect for 1977 only. Schneider's bill passed out of his committee early in April and looked likely to receive strong support in the full House.

A different twist at helping local school districts is S.B. 244 sponsored by Sen. Bradley Glass (R., Northbrook). It would permit school districts to discontinue or modify programs when the state reimbursement is less than the amount necessary to pay claims in full.

Several bills affecting the school aid formula and the "hold harmless" provision were introduced during the session and were scheduled to be heard in the education committees the end of April. Among these are H.B. 753 by Schneider which would change the resource equalizer formula so that the maximum value of tax rates to be used would be 3 per cent (now 2.90) for unit districts and 1.95 per cent (now 1.90) for elementary districts. Under last year's Christmas tree bill, the unit and elementary tax rates were lowered from 3 and 1.95 per cent to the present levels. Schneider's bill would reverse that action and tend to help suburban Chicago schools.

Two bills filed by Rep. Richard Brummer (D., Effingham) deal with the formula in an effort to avoid losses a number of districts face as a result of 1976 assessed valuation. H.B. 1880 would allow districts to regain 100 per cent of the expected loss, while H.B. 1958 would only guarantee 25 per cent.

Full funding of the formula appears doubtful for the third year in a row because of tight money and last year's changes

altered in the General Assembly to spread the increase over four years. In the first year, 1973-74, the local school districts received one-fourth of the increase as computed by the resource equalizer formula. Actual claims paid totaled $914 million. In the second year, 1974-75, they received one-half of their total increase, with total payments of $1.054 billion. In these years, because of the decision to phase in full funding, school experts considered the formula to be fully funded.

However, for the 1975-76 school year, when districts were expecting their claims to be funded at three-fourths of the computed increase, Gov. Walker reduced the appropriation to provide only 95 per cent of the three-fourths figure. The state paid out $1.173 billion in claims. In the current 1976-77 school year, the year scheduled as the fourth and final step to actual full funding, the formula is being funded at 89 per cent of the actual full claim as computed by the local school districts. Total payments are approximately $1.250 billion.

The fiscal year 1978 budget is now before the General Assembly, and full funding of the formula appears doubtful for the third year in a row. This is due to several factors. First of all, the state is still suffering from the tight money situation which first plagued it two years ago. Second, Gov. James R. Thompson is determined to hold spending at the $10 billion level; his total recommended budget calls for only $311 million in new state spending above the current year's budget. With a two-year term, Thompson cannot afford politically to be forced into an increase in the state's income tax either this year or next. In giving elementary and secondary education $75 million more than this year, he pointed out that education received the biggest hike of all areas in his budget. He also admitted that he expects education to be the biggest controversy as the legislature appropriates for fiscal year 1978.

The six changes which passed last year combine to make yet another problem area in fully funding the school aid formula. The cost this year of those changes is estimated to add approximately $111 million to formula costs. The Illinois Office of Education has projected that it will cost $1.386 billion

H.B. 1880 includes the "hold harmless" clause, which would give the districts the option of using 1975 or 1976 assessed valuation (equalized by multiplier) and the option of using the 1975 or 1976 operating tax rate. They could thus avoid the loss of any state aid. The second bill, which applies to all counties in which the assessed valuation increased, would allow districts to use either the 1975 or 1976 tax rate in computing the school aid formula. The second bill does not mention an option on the assessed valuation.

Perhaps the most daring proposals on funding schools is legislation to allow school districts to levy income taxes. Proposed by Rep. Jim Edgar (R., Charleston), H.B. 788 would allow school boards to ask for a local income tax that would supplement money raised through property taxes. A second variation was proposed by Sen. Vivian Hickey (D., Rockford). Her bill would allow districts to replace property tax with income tax for purposes of supporting schools.

State mandated programs

In Gov. Thompson's state of the state address, he noted that in the course of his campaign he found that "local people had little to say about the wisdom or necessity of programs imposed on a statewide basis and perhaps most importantly, once mandated, state programs are inadequately funded by the state." At the time he said it would be his administration's policy to reexamine state mandates. While professing education to be his "number one priority," Thompson said, "An education program can be every bit as outdated, inefficient and duplicative as a state program in any other field."

On April 20 he announced the appointment of 23 members to the Commission on State Mandated Programs, with a subcommittee assigned to education matters. James Nowlan, the governor's special assistant on education, is heading that panel. At the first organizational meeting, the subcommittee decided to study those programs statutorily mandated and those which require fiscal support.

There are now 16 education programs mandated in the statutes. These are in addition to those basic courses of study such as language arts and math which are required by statutes and the Office of Education regulations. The 16 are: adult education, adult education with public assistance, adult education basic, special education transportation, special education private tuition, special education extraordinary, special education personnel reimbursement, special education orphanage tuition, bilingual in Chicago, bilingual downstate, regional vocational education, breakfast-lunch, vocational education, textbook loan, deaf-blind, and materials for visually handicapped.

The legal section of the Office of Education is currently compiling a list of mandated programs. Those which might come under question this year are the length of the school week, health regulations such as those regarding air circulation, certifying levels for school nurses, driver education and desegregation. While desegregation is not a program as such, it is a situation that requires funds.

The Office of Education wants to add two new programs this year, contained in H.B. 2361, sponsored by Rep. Thomas Hanahan (D., Chicago). The ESR model program would provide $250,000 to educational service regions for regional programs. The desegregation assistance program provides $2 million in grant funds for district programs.

The State Board of Education in March initiated a policy development process that would put most major education issues under scrutiny during the next three years. School finance will be a principle subject in fiscal 1978 and mandated programs will be a topic the third year. In June 1976 the board named a blue-ribbon citizens commission to conduct a major review of state aid programs to local schools. The commission has studied the problems with the state's resource equalizer formula, variations of wealth and assessment practices in local districts and funding categorical grants on a current year basis. The commission's recommendations were to be presented to the board May 4./ *Mary C. Galligan*□

to fully fund the formula for fiscal 1978, with these changes in effect. If the 1976 package had not been incorporated into the plan, it might have been fully funded in 1978.

The formula's future

With school funding at the center of almost every debate over state spending, the big question is whether the new formula is working. Are schools better off than they were before? With the resource equalizer formula in use for the fifth consecutive year, some answers should be emerging.

Dr. Ben C. Hubbard of Illinois State University, who was one of the architects of the formula, claims that one only has to look at the state aid that went to schools in 1973, the year before the formula was instituted ($800 million), and the current level of funding under the formula ($1.250 billion) to see that it has raised the state's share of funding schools by 50 per cent. That alone, he says, should be the answer. But he adds, "The formula is working — at the 1973 dollar level." He explains that the formula was designed to withstand some degree of inflation, but not the double-digit inflation it has experienced. He says the money is now going to the poorer schools as it never did before. He cites downstate Cairo and East St. Louis as two previously impoverished districts where the formula was a "lifesaver," and where the schools can now offer their students a real education.

Dr. Hubbard says there are two reasons local schools are struggling under the formula. If it can't be fully funded, he says, it can't be expected to equalize the level of education. Hubbard says that it's time for the General Assembly and the governor to realize that if they really want quality education, they must pay for it, through a tax increase — a solution, he says, that the politicians won't consider at this time. The second problem with the formula, according to Hubbard, is the failure of local school districts to plan. He says as enrollment drops, schools could shift burdens and save money if they faced the problem instead of insisting costs don't decrease along with enrollments. At some point, he says, costs do begin to decrease.

State Sen. Arthur Berman (D., Chicago) is one of many legislators who agrees with Dr. Hubbard that the formula is sending money where it's most needed. Berman represents three school districts, one in Chicago and two in Evanston. He says Chicago's problems are critical, but doesn't think there's enough state money to bail them out. He maintains that last year's changes provided "greater equity all the way around." And Berman says if Gov. Thompson has underestimated this year's revenue, as he believes is the case, the legislature might be able to appropriate state aid at a higher level.

But some legislators and school officials from districts which receive minimal aid under the formula don't agree that it is working. In some downstate school districts where assessed valuation is relatively high, tax rates are low and the voters are reluctant to raise them. One solution proposed by some downstate lawmakers this spring would allow local school districts to impose an income tax upon referendum approval. An income factor in the formula would work to the advantage of rural districts whose farmlands put them in the high assessed valuation category. Sponsors say, however, that property no longer is synonymous with wealth or high income. They argue that an income tax would be more equitable than the property tax. A local income tax, the downstaters feel, could even reduce property taxes. Obviously, this idea would meet with stiff opposition from income-wealthy suburban legislators as well as central city lawmakers whose areas benefit more from the current property adjustments than they would with the income tax.

> If the governor and General Assembly really want quality education, they must pay for it through a tax increase

Some further changes might be in store for unit districts, mostly found outside the Chicago area. Unit districts now have a 12-cent limit on their transportation tax rate. If the General Assembly would agree to allow unit districts to raise transportation taxes as high as 24 cents without voter approval, these districts might get a larger share of the pie.

Some observers feel that the reluctance on the part of the voters to increase local tax rates, and thus increase state aid, deprives the children of a quality education and should be circumvented. One solution sometimes mentioned is to leave the decision to raise taxes with the local school boards, a politically impractical position which is not taken too seriously.

The General Assembly could decide to drop the Strayer-Haig formula and require all districts to compute their state aid by the resource equalizer formula. This would save the state about $8 million, but the $8 million loss could be crippling to several districts now receiving state dollars through the old Strayer-Haig plan. For this reason, the plan will not be easy to scrap.

There are still those who argue for abandoning the whole system of equalizing aid in favor of a flat-rate per student payment to districts. But these individuals are a minority, and this alternative is not likely to emerge as a threat to the formula. No school district is getting more than it needs, and most are getting less than they want. Yet, few are blaming this condition on the formula.

It must be remembered that the resource equalizer formula is simply a mathematical mechanism designed to equalize the amount of education money available to the students of the state. It cannot eliminate all of Illinois' educational inequities, especially if the myriad factors which shape a child's life are considered. The formula addresses the education issue from one front by attempting to provide equal support to all students.

Since the one ingredient that the state will guarantee under this plan is a school district's assessed valuation, high property value is no longer the determinant of a quality education in Illinois. The district which will benefit most from the resource equalizer formula would be the district with the maximum taxing rate, a good share of Title I students and a stable or increasing enrollment. Ideally, districts like these are the ones most deserving of state funds. Any local district not meeting this description will probably not agree, but at the present time the formula is in no real danger of extinction.□

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By DAVID V. MAY

What's happened to this revenue source which once held the commanding role in school financing?

Property tax for public schools

THE SQUEEZE is on for public school districts in Illinois. Caught in the pinch between skyrocketing expenses and slowly growing revenues, many districts have cut programs, reduced staff, shelved expansion plans and withheld salary increases. Some have cut extracurricular activities such as sports, school newspapers and yearbooks. Others have gone to a 12-month schedule. In human terms these retrenchments mean that many Illinois students no longer have the benefit of the same programs that students enjoyed ten or even five years ago. In economic terms, they show that the revenue base supporting public education in Illinois — from federal, state and local sources — is insufficient.

A century ago, many school districts owned property bestowed on them by law when the land was first surveyed and platted. This land was used for schoolyards, rented to farmers and sold. Today very few school districts own income property, and even those rare exceptions, such as the Chicago Board of Education with its several Loop properties, derive only a tiny percentage of operating revenues from income property. Another minute portion of school expenses is covered by bequests in wills and donations by civic groups such as PTAs. The only significant source of local revenue is the property tax.

Historically, the local property tax was the largest revenue source for public schools. State and federal funding was inconsequential. The 1964-65 school year saw local property taxes generate $855 million for Illinois schools, 70 per cent of total revenues. The state provided 27 per cent; the federal government 2 per cent. Ten years later, the 1974-75 school year saw property tax collections of $1,782 million. Although this figure was 108 per cent higher than 10 years earlier, it amounted to only 46 per cent of total school revenues. The state contribution had risen to nearly 40 per cent; federal funding was almost 6 per cent. The 1975-76 school year found state funds exceeding local property tax revenues for the first time. What has happened to local school taxes in the last 10 years to reduce their former commanding role in school financing?

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Dynamics of the tax

To begin to answer this question, one must first understand the dynamics of the property tax. In addition to education, property taxes fund many other local public functions such as county and city governments, fire protection, parks, sewage treatment, mosquito abatement, etc. The property tax levied to provide all these services is an annual ad valorem tax on real property and on personal property owned by corporations and certain partnerships and estates. "Ad valorem" means that the amount of the tax is related to the value of the property — not to the number of bedrooms in a house or the horsepower of a car's engine. The term "real property" refers to land, buildings, other structures attached to the land such as windmills or dams, minerals in the earth and other legal interest in land. "Personal property" is everything else: automobiles, furniture, livestock and other movable goods.

Many owners of real property are not required to pay any tax at all on their property; these include the federal, state and local governments. Religious organizations are exempt from tax on property used for the religion; this covers churches, religious schools and similar property but not investment property even though the income is used for religious purposes. Likewise, certain charitable, medical, educational and scientific organizations are exempt from taxes on property used directly in activities that are thought to further the public good. A partial exemption from property taxes is provided for the elderly: $1,500 is deducted from the assessed value of their homes before the tax is calculated. Further tax relief comes from circuit breaker legislation which provides for refunding a portion of the property tax paid on the homes of elderly and disabled persons who have a low income.

The personal property tax on individuals was abolished in 1972. At present, private corporations are the major class subject to the personal property tax. The 1970 Illinois Constitution Article IX, Section 5(c) directs the General Assembly to replace this tax by 1979 with a nonproperty tax on corporations. It is not clear whether the legislature will comply with this constitutional mandate, but whatever the legislature decides, this portion of school revenues should remain intact barring a constitutional amendment or a shift in judicial interpretation.

The abolition of the individual personal property tax in 1972 reduced the property tax statewide by about $1 billion or about 2 per cent. The impact of this reduction was not felt in the Cook County area because the tax had been ignored there for years. Conversely, in downstate school districts, the impact on the tax was roughly double the state percentage.

The process of taxing property for schools starts with the preparation of a budget by the local school district. This budget is divided into various categories called "funds": education, operations,

building and maintenance, capital improvements, transportation, summer education, special or vocational education buildings, fire and safety, and bond retirement. After approval by the local school board, the budget is submitted to the county clerk who levies a tax upon taxable property in the school district sufficient to raise the money required to meet the budget. To levy the tax, the clerk calculates a tax rate which is a percentage of the taxable value of local property.

The catch here is that the state has set maximum tax rates for each fund which generally can be exceeded only if the voters approve by referendum vote. Since almost every school district needs as much money as possible, the budgets are carefully designed to require the clerk to levy the maximum tax rate for each fund. Thus the tax rate ceiling limits the budget, not the other way around.

Assessment is the process whereby the values of specific pieces of property are determined and placed on the tax rolls. Typically a township or county assessor is empowered to inspect parcels and, based upon experience and utilizing standard methods, estimate the current market value of the property. This determination can be adjusted or appealed before a final entry is made to the tax rolls.

Since such a value will soon change in response to improvements, deterioration, inflation, altered surrounding circumstances, the economic climate, etc., reassessment is necessary. Illinois law requires assessors to reassess all property at least every four years. More frequent reassessments are common. Specific parcels which have been improved by construction are reassessed immediately; certain areas of a county may be reassessed more quickly than others if rapid fluctuations in prices are suspected. In any event, every taxable piece of property should have a fairly recently assessed value.

Multiplier for equalization

A strange twist is added at this point. The "assessed value" of property in Illinois is by law declared to be 33 1/3 per cent of the actual market value of the property. An exception is Cook County where various classes of property are assessed at different levels — some above 33 1/3 per cent, others below. In most of the state though, a $30,000 house will be listed for tax purposes as having a value of $10,000.

But, that's not the last step. A state agency, the Department of Local Government Affairs, has been assigned the task of assuring that all counties assess at the same level. The purchase price is determined by using the property transfer tax on the sales price of every real estate transaction. This actual market value is compared to the assessed value multiplied by three. This comparison is done for urban and rural property in each county. The department can then calculate a tax "multiplier" to equalize the assessing variations from county to county.

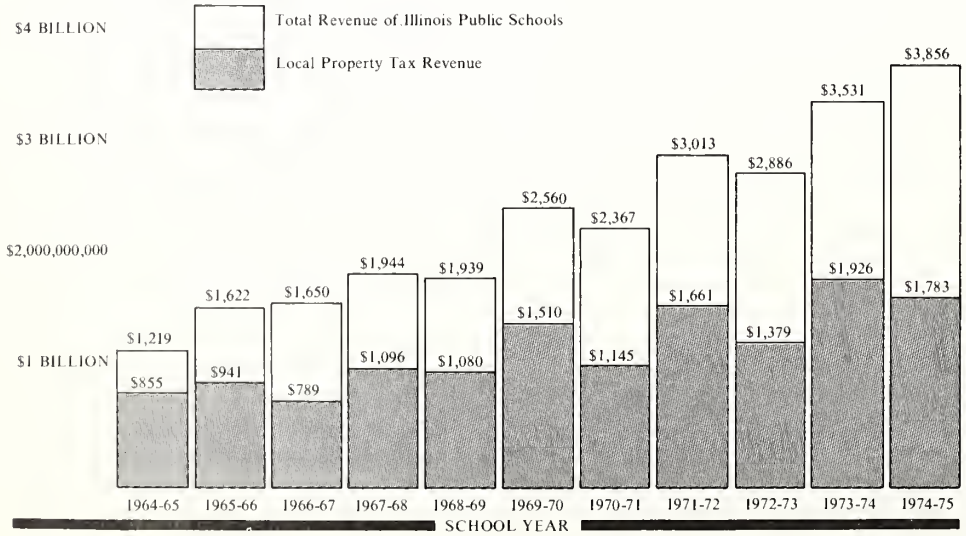
The main purpose for the multiplier arises from the state school aid formula. This formula is designed to apportion state education funds on the basis of local effort. This local effort is measured by the school tax rate. If the school tax rate drops below a minimum figure set by the state, state aid is reduced. The opportunity for chicanery arises in assessing local property. Intentionally low assessments, such as 25 per cent of market value instead of the required 33 1/3 per cent, would allow raising the tax rate without actually raising the amount of taxes paid. The equalization multiplier makes this dodge more difficult. The equalization process also can help spot inequities between townships and between urban and rural property. Finally, the multiplier gives the assessors a continual review of the accuracy of their work.

Typical multipliers are between 0.900 and 1.500, but some are even smaller and others much higher. A multiplier of 1.050 would raise the assessed valuation of a $30,000 home from $10,000 to $10,500. If the local elementary school tax rate was 1.5 per cent, expressed as .0150, the annual tax on the owner of this hypothetical home would be $157.50 for the elementary schools. The high school district tax might well be about the same.

The two most important variables in determining how much property tax is levied are the tax rate and the total equalized assessed value. Increases in the tax rate can generally only be accomplished by referendum. The school referendum allows the aggrieved taxpayer to express complaints about high taxes and government profligacy. These referenda come in two types: proposals to raise tax rate ceilings and bond issues requiring voter endorsement. In these elections the taxpayer can say "no" not just to the question at issue but — at least symbolically — to increased taxes and expanding government in general. Unfortunately, for the school children this approach often means that they must bear the brunt of public ire over the excessive appropriations of legislators in Springfield and Washington whose tax proposals are

SCHOOL REVENUES

Table 1. Illinois public school revenues school years 1964-65 — 1974-75



not directly tested by election.

Has the stinginess of taxpayers caused the school financing woes? Statewide data shows that from 1967 to 1973 the average tax rate for schools, weighted according to property and students, rose from .0287 to .0362 — a 26.1 per cent rise. The cost of living index rose 33 per cent during that same period and the per capita disposable income rose 50 per cent. At first glance the voters' performance may appear wanting, but remember that this tax rate rise was three-fourths of the inflation rate and one-half of the increase in income, *without considering reassessment.*

Factors of inflation

From 1967 to 1973 the total Illinois equalized assessed value of taxable property rose 19 per cent, from $42.1 billion to $50.2 billion.* Combined with the 26.1 per cent rise in the tax rate, this increase meant a rise in elementary and secondary school property tax extensions of 50 per cent: from $1.21 billion in 1967 to $1.82 billion in 1973. This 50 per cent rise in local school property taxes is equal to the 50 per cent rise over the same period in per capita disposable income.+ Therefore, the property tax payers cannot be accused of being stingier with the schools. In fact, when the sums generated for public schools by state and federal taxes are added to the local property taxes, the data for Illinois shows that from 1966 to 1972, the percentage of per capita income that was paid for schools rose from 3.8 per cent to 5.5 per cent. This 5.5 per cent figure has remained fairly constant through 1975.

The rise in total assessed valuation, however, is less than might be expected. A tax based primarily on the value of real property would seem to provide an excellent hedge against inflation. Farmers know that the prices paid for Illinois farmland have been skyrocketing. Builders and would-be homeowners have watched dramatic increases in construction costs hike the prices of both new and old buildings. These price rises result from two economic factors: general inflation and expansion of the economy. General inflation particularly raises land prices because the supply of land is constant and new technologies cannot make it cheaper or outmoded.

Anyone familiar with realty knows that an investment in real property will usually retain its value relative to other investments despite use to earn income or derive other benefits. Furthermore, the expansion of both population and per capita real income are accompanied by new construction and repair and remodeling to provide more housing and business space. In an expanding economy, therefore, the total value of real property should increase at a rate greater than inflation. An examination of the most recent Illinois property statistics fails to show this.

From 1960 to 1970 the total Illinois equalized assessed value of property increased 33.3 per cent. Over the same period the consumer price index rose 31 per cent — about the same rate. But from 1970 to 1975 the assessed value — adjusted to negate the influence of the abolition of the personal property tax on individuals — rose only 17 per cent. In the same period the consumer price index rose nearly 40 per cent — over twice as fast.

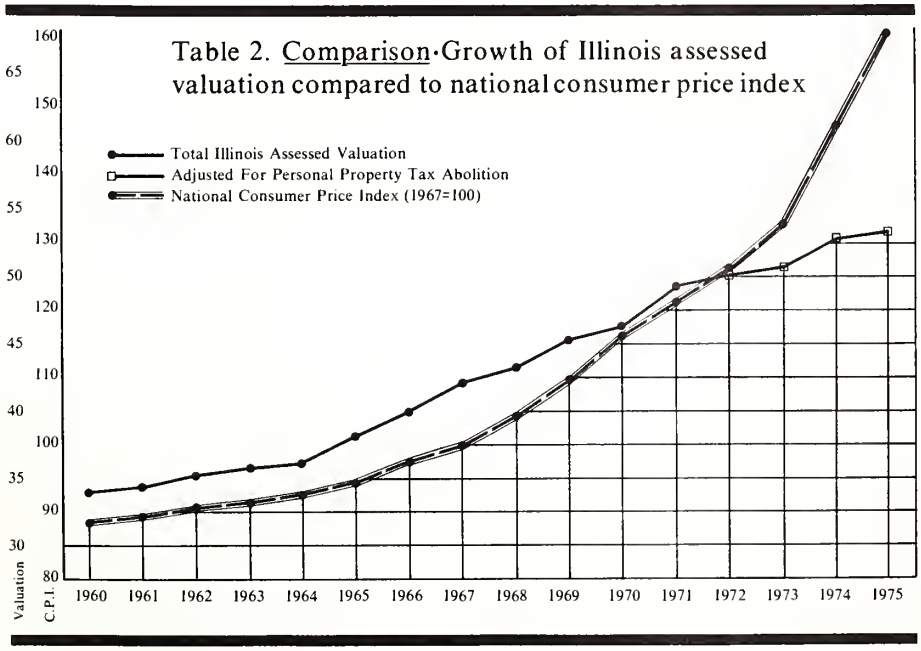
The most distressing figures are the most recent. Assessed value from 1972 to 1975 rose only 6.6 per cent while inflation raced ahead 29 per cent. Since statewide property assessment data since 1975 is not yet available, one can only speculate whether assessed values have risen at inflation rates. Even optimistic estimates, however, would be well below the 1976-77 annual inflation rates of 8 - 12 per cent.

Statistics of average purchase prices for used homes in the Chicago metropolitan area from 1967 to 1976 show increases slightly larger than those of the consumer price index. This tends to support the hypothesis that existing property appreciates at or above the inflation rate. The further assumption that new construction and increased demand for land by a growing economy will add enough value to total property values to keep up with total disposable income is not verified. However, growth and expansion surely do occur and must amount to a large sum.

Reasons for tax loss

We can estimate how much money is involved in the imbalance between assessed values and inflation and between assessed values and personal incomes. If the taxable property in 1968 had been maintained and replaced so that similar land, buildings and personal property were in existence in 1973; and if the prices of the property had inflated at the same rate as consumer prices as measured by the consumer price index, the equalized assessed dollar value in 1973, excluding the individual personal property, would have been $55.0 billion, rather than the actual $50.2 billion. The difference is a $4.8 billion shortfall

Table 2. Comparison·Growth of Illinois assessed valuation compared to national consumer price index



Source: "Illinois Property Tax Statistics," 1966-1975. Department of Local Government Affairs.
+Source: U.S. Department of Commerce figures.

which, if taxed for schools at the 1973 average rate of .0362, means $174 million less for the schools in 1973. If the 1968 property had been expanded and enhanced in value at the same rate as the growth of real disposable personal income in Illinois, the equalized assessed dollar value would have been $64.4 billion — $14.2 billion more than the actual 1973 total assessments. If the average school tax rate is applied against this sum, the amount that would be raised is a staggering $511 million. The $174 million is about 8 per cent of total school property tax revenues in 1973; the $511 million is nearly 25 per cent.

The recent failure of assessed values of property to keep up with inflation, much less with personal income growth, is something of a mystery. One factor was the abolition of the personal property tax on individuals in 1970. Although hard data is not available, an estimated $1 billion, or 2 per cent, was dropped from the tax rolls. The data used above, however, was corrected to eliminate the influence of the end of this tax, so the question remains. One explanation is that a larger portion of wealth is being spent on personal property than in the past. This may be a factor in the growing gap between income growth rates and assessed valuation rises, but it does little to explain the sudden leap ahead of inflation rates over assessed valuation figures.

Another hypothesis points to the lag in the assessment, taxation and disbursement process as the critical factor. Indeed, the procedure followed in laying the Illinois property tax is ill-suited to inflationary times. The levy for a given year is based upon the equalized assessed values for the preceding year. If reassessment occurs every four years as state law requires as a maximum, the average age of assessments on the tax rolls will be two years old. Already the tax collected is three years behind inflating costs. Over a period of time when the inflation rate is fairly constant, the increase in assessed value will be fairly constant. However, when inflation really leaps ahead, the effect will not be seen in the taxes until the reassessment process catches up a couple of years later. This hypothesis provides a fairly good explanation for the years 1960 to 1972, but fails to deal with the slowdown in assessed value growth from 1972 to 1975.

Another theory has been put forward to explain the mystery of these recent years. The assessors in the 1960's were slowly adjusting the assessed valuations toward the unenforced statutory requirement that assessments be equal to 50 per cent of actual market value. When legal action created an immediate threat that this 50 per cent level would be enforced, the legislature passed a bill in 1971 reducing the requirement to 33 1/3 per cent, effective 1975. Assessors immediately, so the theory goes, began a slow readjustment of values back down toward 33 1/3 per cent. This resulted in small increases in assessed value from 1972 to 1975 despite accelerating inflation. Unfortunately, this hypothesis defies verification and cannot alone account for all of the observed shortfall in these years.

The property tax has begun to fall out of favor because it often fails to satisfy a pinciple of taxation: apportion the burden of taxation on the basis of ability to pay

Debate on the tax

Over the years the property tax has begun to fall out of favor because it often fails to satisfy a principle of taxation: apportion the burden of taxation on the basis of ability to pay. Ability to pay is the touchstone of the income tax, and it is in comparison to the income tax that the property tax fails to measure up. Especially hard pressed are the family farmers and the retired. The latter, often living in appreciating homes on fixed incomes, find it increasingly hard to make ends meet. For them the homestead and circuit breaker tax relief provisions are available. Farmers are in a business requiring huge capital investments in land, and the concomitant property taxes become a major business expense. Some relief has recently been provided by a state law directing assessment of agricultural land to be based upon value as used rather than value derived from potential for more lucrative uses. Thus a farm in the path of urban development will not be taxed at actual market value until the potential is actually realized.

Another principle often invoked by framers of tax legislation is that the burden of the tax should be apportioned to those receiving the benefits of the tax funds. For a drainage district or a fire protection district a property tax thereby makes some sense, but for a school district there is little relationship between property taxes and education benefits. Therefore it comes as no surprise that, with the advent of a state income tax, many favor shifting education expenses to the state.

One more line of argument against the school property tax points out that although federal grants and the state aid allocation formula have gone a long way toward equalizing per pupil expenditures in different districts, the wealthy districts are still capable of spending more than the poorer districts. In order to further equalize educational funding, many support a continued shift to state and federal financing. These people maintain that every child in the state should have an equal educational opportunity regardless of the circumstances of the school district in which the student happens to reside.

On the other side of the discussions on school taxes are those who see a threat to liberty. With the continuing transfer of funding from local sources to state and federal sources, some fear a loss of local control over schools. It is bad enough that decisions on matters such as number of school days and safety requirements are made from afar, but the specter of complete state regulation of curriculum, books, teacher salaries and discipline codes raises strong opposition among many.

Another reason given for retaining the local property tax for schools is more pragmatic. The schools need all the money they can get, and this is one source that is sure to be there next year. A new legislature can change the allocation formula; Congress can cut education funds; but the property tax will continue to provide a big chunk of money. It is hard to get people to accept taxes; but old, familiar taxes like the property tax are likely to resist the winds of change.□

By GARY ADKINS

Welfare's chronic case of frustration

Public Aid

Like King Kong, public aid in Illinois finds itself under attack from many sides. Entangled in a web of rules and regulations of federal programs, the state has little choice but to participate in them in order to receive federal money

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WELFARE is the second most expensive program area in state spending. This makes it one of the most controversial and least popular. A Harris Survey taken last November revealed that, nationwide, 50 per cent of adults favored cuts in federal welfare spending. Ironically, it is also the program that does more to directly help people than any other. In fact, that is the dilemma: to cut the high cost of public aid risks undercutting the well-being of people, hundreds of thousands of people.

New Gov. Jim Thompson addressed the knotty problem of welfare in his campaign position paper on public aid. While calling the history of Illinois welfare "a sad tale of false hopes, broken dreams, escalating costs and serious waste and fraud," he also spoke out against the "political rhetoric about 'welfare cheaters' and 'free handouts.'" Thompson said, "The system not only places a severe strain on public resources, but it also threatens to lock the poor into an unbreakable poverty cycle that extends for generations." If this is his belief, then what can we expect him to do to reform the system in his short two years? And what will the legislature do?

Thompson's campaign position paper listed five reform ideas. Like most reform ideas they are all rather incremental approaches, that is, they propose small money saving ideas, but no basic changes to the system. Briefly his suggestions include: (1) tightening up procedures for getting federal funds — a persistent problem in light of the maze of federal regulations; (2) cutting down on the number of middle managers in the Illinois Department of Public Aid (IDPA), and giving more field staff less paperwork; (3) implementing a six-point program to eliminate recipient fraud; (4) improving vocational training and job placement; (5) giving greater consideration to recipients' rights.

These suggestions might help; they seem realistic, but will they have any real impact on the enormously large and intricate body of welfare policies and regulations?

To answer this perhaps unanswerable question an uncluttered and basic definition of public aid is needed. What is public aid? Generally, it is a system whereby government provides temporary help (money or services) to poor and needy citizens so that they can become self-reliant taxpayers. It is, finally, a contradictory idea. Public welfare is, at heart, a socialist concept and has always been suspect in a society that claims to be devoted to the ideas of free enterprise and self-improvement.

In Illinois most public aid comes under one of these programs. They are: (1) Aid to Families with Dependent Children (AFDC); (2) Food Stamps; (3) State Supplemental Payment (SSP); (4) Medical Assistance (MA); (5) General Assistance (GA); (6) Aid to the Medically Indigent (AMI); and (7) Social Services, which includes 27 individual programs.

State funds entirely support the State Supplemental Payment program. General Assistance is administered by either townships or commission counties, except Chicago where IDPA administers the program. In areas where state financial participation is required, the state provides 94 per cent of the funding with the other 6 per cent provided by the local governments. The locally administered programs where the appropriate tax levy is not made receive no state funds.

The Food Stamp program is funded entirely by the U.S. Department of Agriculture, but the administrative costs are shared equally between the federal and state government. Both the Medical Assistance and Aid to Families

Why does public aid cost so much? The answer lies in the problem of unemployment, the broad range of social and medical services offered by the state, overlapping responsibilities of agencies and dependence on federal funds

with Dependent Children are funded equally by federal and state money. The group of 27 programs under Social Services is funded with 75 per cent federal and 25 per cent state funds.

Under the Social Security Act, federal funds are disbursed to states having an acceptable state plan for strengthening and improving their programs of Aid to Families with Dependent Children, Medical Assistance, and the provision of social services. The U.S. Department of Health, Education and Welfare (HEW) administers the Social Security Act and grants federal funds to these programs when it determines that state programs are efficiently managed. HEW also establishes regulations for the administration of these programs and withholds funds if states fail to conform with federal regulations. Federal payments are made primarily in the form of matching funds and are paid into the state's General Revenue Fund. The Department of Public Aid's budget, paid from the fund, is appropriated each year by the General Assembly.

Many say the programs are so big now they are out of control. Like King Kong they cannot be improved in nature and should instead be killed. But, so long as the federal programs are in force with their regulations and federal funds, the state has little choice but to participate in them in order to receive federal money.

Reorganization and reform

Another ongoing problem the state must face is this: If we are to have a welfare system, how should it be structured? One solution proposed by the Ogilvie administration in 1966, but never enacted, was to consolidate all state health and welfare agencies under a single department. Under the plan, the departments of Children and Family Services, Public Aid, Public Health, Mental Health, as well as the Board of Vocational Education and Rehabilitation, the Youth Commission, and the Division of Services for Crippled Children, would all become part of a "little HEW." It was argued that such restructuring would reduce overlapping responsibilities and end conflicting actions between agencies. The Thompson administration is also discussing various reforms of the welfare structure, but no specific reorganization has been recommended at this time.

At present the IDPA is involved in multi-agency responsibilities. Sometimes one agency is making placements at a home at the same time that another agency is trying to remove the same patients. IDPA has the extra condition (they deny it is a problem) of not having the power to remove patients from a home. The *Chicago Tribune* referred to this as a serious deficiency for a department that makes payments for 17,000 former patients of mental hospitals, and 19,663 foster children (most of whom, by the way, are primarily the responsibility of either the Department of Children and Family Services, or the Department of Corrections).

Some of this confusion was eliminated by meetings of the so-called health cabinet, set up by then Gov. Walker and composed of the directors of all the health and welfare agencies of the state. Because of these meetings, the people at the top — at least — were occasionally working together on mutual problems, and solving some. Gov. Thompson is continuing with this concept.

Aside from structural changes, another welfare improvement that has been often discussed is to make more people on welfare work for their money. This is a popular solution with many, but not a comprehensive one, since most people on welfare are children and old and disabled people. Only 12.4 per cent of people on welfare in Illinois are classified as employable. In the general assistance program the rate is much higher: 70 per cent are classified as employable. To that extent, then, the public aid load is a result of unemployment. Aside from the unemployment problem, welfare must support mothers not working but with children to support, the blind, disabled, and old people. Most of these are dependent upon it for their very lives. How do you cut off or reduce funds to these people after once making a commitment to them?

Heavy welfare spending is likely to be with us for some time to come. "Over 10 per cent of the population of Illinois, approximately 1,230,000 persons, are receiving some kind of public assistance," according to Walker's accountability budget for fiscal year 1977. The state's bill for public aid for fiscal 1977 will be close to $2 billion (see table 1). An appropriation of $1,986,296,763 passed both houses of the General Assembly, and was approved with a $3.4 million cut by the governor on July 12 last year, but the legislature overrode the veto and restored the cut. Prior to the veto the House had lopped off over $11 million requested by IDPA for new administrative staff and added contractual services. Specifically, funding for 1,091 new staff was eliminated.

The federal share of welfare costs

Approximately 50 per cent of the state's aid costs are paid by the federal government. In addition, many communities of the state don't receive state money for local public aid expense, and their costs are thus excluded from the total public aid bill for Illinois. Why does public assistance cost so much? What does the money buy? The answer lies in the broad range of social and medical services, as well as outright public welfare grants, offered by IDPA.

The Aid to Families with Dependent Children program aims at "strengthening family life" by providing grants, comprehensive medical care and social services to families in need. Those eligible are families with children who have been deprived of parental support or care by death, disability or continued absence from the home (AFDC), or by unemployment (AFDC-U). To apply, a family must have one or more children living at home who are under age 18, or

under 21, if regularly attending an accredited school or college. In setting the amount of assistance due a family, IDPA considers the economic section of Illinois the family resides in (counties are officially classed into three sections for this purpose) and the number of children in the family.

For the first time in 10 years, there was a net drop in the caseload in 1976 for the Illinois Aid to Families with Dependent Children. As of last November there were approximately 772,039 people collecting AFDC payments in the state, over 30,000 fewer than in February of 1975. It may be that this caseload decrease was largely due to the reassignment of the more experienced staff in IDPA to "intake" positions (making critical initial eligibility decisions).

Social Services programs have been offered since October 1975 under a plan which ends June 30. Hearings are being held to determine how to continue the programs after June 30. Some of these social services include: day care for children, housekeeping or homemaking needed because of illness or incapacity, developmental and social adjustment help, family planning advice, housing improvement services, protective services for children, necessary transportation, literacy training, vocational and adult education, and other needed support help.

Most of these services are provided by a state agency, and payments are not made to an individual but to the agency providing the service. Persons receiving AFDC, SSP or the federal Supplemental Security Income and others who are "income eligible" qualify for these programs administered by the Illinois Department of Public Aid.

As of June 1976, 565,240 of the 788,244 persons getting AFDC were children. About 88 per cent of all those children were in the care of their mother and 30.2 per cent were under five years of age. The median age, in fact, for children receiving AFDC is 8.5 years.

Far more encouraging and surprising than this is the fact that the median time that an AFDC family receives welfare is less than three years. This fact undercuts the widespread belief — repeated by Thompson in his position paper last September — that many families remain on welfare for generations. When this is considered along with the high number of children involved, it also points up the necessity for this kind of welfare, even to those most opposed to "big government giveaways."

Medical Assistance most costly

Medical Assistance (commonly referred to as Medicaid), a federal-state program subsidizing health care for the poor, has been accepted since its inception by nearly one of every five Americans. Illinois' Medicaid program is "one of the most comprehensive in the nation," according to the state's fiscal 1977 budget book. It is also the single most expensive welfare program in Illinois and certainly the most fraud-ridden and abused.

IDPA's Medical Assistance program offers comprehensive medical services to AFDC recipients and persons on the federal Supplemental Security Income (SSI) program who qualify. This assistance also goes to other low income families with minor children and aged, blind, or disabled individuals who do not receive cash assistance, if their medical bills exceed their ability to meet payment and their assets meet state standards. This category of the program is called Medical-Assistance-No Grant (MA-NG). In 1975 over 800,000 people a month received Medical Assistance. Of these, about 31 per cent received only medical care, while the other 69 per cent were already receiving some form of aid from other welfare programs.

In fiscal year 1976 IDPA spent about $868 million for MA, and will spend an estimated $912 million in fiscal 1977. During calendar year 1975 the program supported a monthly average of 42,667 patients in nursing homes and provided 2.7 million days of hospital services, 13 million services of physicians, dentists, etc. In addition, it footed the bill for 14.7 million drug prescriptions, helped pay for in-patient hospital mental care for 855 people (at $11.5 million), and facilitated medical care for an average of 19,663 foster care children per month (costing $6.1 million).

A number of drawbacks go along with these services, not the least of which is the apparent high incidence of fraud in the program. In April of 1975 the U.S. Comptroller General's Office issued a 45-page report on the Illinois Medicaid program. The report criticized IDPA for failing to combat widespread fraud, especially by medical care providers. In March of 1974 the *Chicago Tribune* disclosed that 70 Illinois doctors collected together over $10 million in a single year for treating welfare patients in an assemblyline fashion. And in 1975 U.S. Senate investigators estimated that up to $60 million a year was being paid illegally from Illinois Medicaid funds. Despite this, IDPA had referred only 22 fraud cases to the state's attorney office for prosecution.

But IDPA has recently made a strong effort to reduce abuse by Medicaid recipients and providers. On September 29, 1976, 16 medical providers were indicted by a federal grand jury as a result of a 14-month investigation. As of December 1976, IDPA had suspended 125 health care providers from participation in Medicaid, and 38 have been terminated from the program. Medical audits and review boards are being used against fraud. In addition, a new, automated Medicaid Management Information System (MMIS) is being planned to help process claims faster for all medical aid providers to clients. It may take a year or two before this new system is operative.

Despite all this, fraud will continue to some extent and will remain a basic issue in the controversy over the advisability of welfare spending in pursuit of social justice. The basic question for political and social planners during the

Table 1. Illinois Department of Public Aid Budget, Fiscal Year 1977

	Original fiscal 1977 request	Passed by House	Passed by Senate	Approved by Governor
Total Distributive	$1,827,169,000	$1,830,569,000[1]	$1,830,569,000	$1,827,169,000[4]
Total Medical	912,000,000	912,000,000	912,000,000	912,000,000
Total Administrative	166,943,400	155,195,760[2]	155,727,760[3]	155,727,760

[1] $3.4 million added by House floor amendment for Illinois Office of Education (IOE) Adult Education.
[2] Reductions totaling $11,747,640 requested for new staff and contractual services.
[3] $532,000 restored for EDP contractual services.
[4] The governor reduced the appropriation for IOE Adult Education from $5.4 million to $2.0 million for a total reduction of $3.4 million, but the legislature overrode the governor's cuts in Adult Education.
Source: Illinois Department of Public Aid.

The department has weeded out ineligibles and cracked down on overpayments, but the state is still not up to federal standards

next decade will be this: To what extent are we willing to tolerate waste in an effort to provide each citizen with adequate health care? Should government even be involved in health care?

SSP least expensive

Largely exempt from this sort of basic philosophical debate will probably be the State Supplemental Payment (SSP) program. It is a relatively small, noncontroversial area of welfare spending, which grants living expenses to those who are poor and aged, blind or physically handicapped. It is inexpensive because, as of January 1974, the federal government assumed most of the cost for grants to this group under the Supplemental Security Income (SSI), which is entirely administered by the federal Social Security Administration program. SSI provides maximum cash grants of $167.80 per month to a recipient living alone. The state supplements this if an SSI recipient's cash assets are below $400 for an individual or $600 for a couple.

SSI recipients may also qualify for medical assistance, food stamps, and social services. Social services include shopping, reading or guide service for recreation, repair of Braille writers, radios, and typewriters, guide dog allowances, transportation, and many other kinds of help.

SSP is a small program. It affects a total of about 45,000 people, but costs the state "only" about $35 million a year — an average of about $750 per person. Of those now on the program about 35,000 are disabled, 9,500 are aged, and 750 are blind. Three years ago, before the start of the federal SSI, there were about 86,000 disabled, 31,000 aged and 1,700 blind on state SSP, and the yearly cost was three times higher than now.

General Assistance

General Assistance (GA) is one Illinois welfare program that receives no federal funds but is instead paid for with state and local funds. In Chicago, the city pays only about 8 per cent of the GA cost, and the state picks up the rest. GA, in fact, is pretty much a Chicago program paid for by the whole state. Many other areas absorb the full cost. In fact, only 42 local governments request GA payments, out of 1,455 governments statewide.

GA is available to those who aren't eligible for federal welfare, but who, nonetheless, need income maintenance to purchase the necessities of life. As such, it is one of the most controversial areas of public spending in Illinois. Ninety-one per cent of GA payments are made in Cook County, a fact strongly resented by much of the rest of the state, resentment often voiced by downstate legislators at appropriation bill hearings in the General Assembly. Many downstate local officials would like to see GA made a mandatory program, fully funded by the state — but when there is talk of state and local cost sharing, they are horrified.

Food Stamp program

In response to downstate agitation, IDPA reviewed all GA cases in Chicago during the last fiscal year and promised to pursue a policy of redetermining every case three times a year. But with an annual budget of $120 million, even that can hardly be expected to quiet critics armed with the knowledge that over 70 per cent of those on GA are considered employable. (Of 61,270 recipients, 45,960 were classed as employable in May of last year.)

All GA recipients are required to register for work and to take most jobs offered them, or risk losing all benefits. Unfortunately, a large number of "employables" are really unqualified for most kinds of skilled labor.

Table 2. Growth of Illinois public aid programs

Number of public aid recipients in Illinois and amount of assistance by program for the month of September of each year, 1965 through 1976

(Medical amounts for persons who receive a grant for Aid to Aged, Blind or Disabled or for Aid to Dependent Children are not shown in the table. Medical amounts are included for persons receiving General Assistance.)

	Aid to Aged (OAA)		Aid to Blind (BA)		Aid to Disabled (DA)		Dependent Children (ADC)		General Assistance (GA)		Medical Only**	
SEPT.	Persons	Dollar Amount	Persons	Dollar Amount	Persons	Dollar Amount	Persons	Dollar Amount	Persons	Dollar Amount	Persons	Dollar Amount
1976†	9,516	$ 567,595	782	$ 51,678	34,913	$2,369,684	776,782	$60,766,095	66,295	$14,821,855	180,137	$25,231,997
1975†	11,138	757,168	846	54,696	37,560	2,645,519	800,875	62,856,398	66,993	13,442,280	169,206	19,129,236
1974†	5,145	207,512	633	27,275	10,399	423,046	755,747	53,707,431	56,384	10,373,369	191,001*	16,983,344
1973	31,304	2,120,395	1,693	186,764	86,835	9,342,505	770,764	48,736,267	52,713	7,589,552	120,182	15,922,026
1972	34,312	2,275,658	1,731	178,261	83,467	8,726,584	736,769	44,615,355	44,390	6,473,249	113,050	9,769,422
1971	34,310	2,084,500	1,698	162,902	63,547	6,090,100	642,551	37,894,300	63,452	8,951,600	97,569	13,147,429
1970	34,757	2,087,916	1,654	150,470	43,211	3,816,603	437,951	24,623,410	74,261	7,697,232	86,454	9,272,743
1969	37,692	2,714,865	1,707	157,745	37,857	3,556,979	344,341	17,076,397	51,125	4,143,423	77,226	7,455,025
1968	37,539	2,272,858	1,765	141,213	34,141	2,836,699	303,163	13,705,661	49,998	4,114,501	68,193	5,954,794
1967	38,826	2,361,323	1,867	143,608	30,926	2,422,567	263,764	11,279,634	47,498	3,063,971	62,022	2,822,768
1966	42,593	2,412,643	2,048	142,733	29,568	2,207,432	247,822	10,009,129	37,989	2,479,227	31,123	2,299,944
1965	54,247	2,447,039	2,373	147,572	30,572	2,045,582	257,347	9,699,622	42,607	2,718,434	3,690	1,969,367

†SSI Program in 1974, 1975, and 1976; Aid to the Aged, Blind, or Disabled figures for 1974 do not include persons receiving a state supplement through the federal Supplemental Security Income (SSI).

**Contains approximately 24,000 persons receiving State Supplement through SSI; 1975 "medical only" persons does not contain these persons.*

***Does not include medical amounts for persons who receive a OAA, BA, DA or ADC grant. GA does include medical.*

Source: Illinois Department of Public Aid.

Administration of the Food Stamp program will cost the state of Illinois about $5.5 million in fiscal 1977; the federal government will provide another $5.5 million for administration of the program in the state. The federal government will allot an additional $240 million for the food stamps themselves. Recipients will pay another $216 million for a total of $456 million worth of food coupons sold here.

About one million poor people are on food stamps in Illinois — out of about 20 million nationwide. The food-buying power of recipients is increased by the stamps, the amount depending upon family size and income. Most of those getting food stamps also receive other forms of public aid, but 20 per cent do not. Over two-thirds of state food stamp recipients live in Cook County.

The program is under attack from many sides nationally. It costs the United States about $6 billion a year and is said to be a major target of abuse for "welfare cheaters." Critics have also charged that some families earning as much as $16,000 a year have nonetheless gotten on the rolls. To be fair, it is a difficult program to administer because of complex and confused regulations. There is strong sentiment in Congress to revise or eliminate the program.

IDPA now has about 9,700 employees. Of this total, 6,561 are field staff caseworkers, 379 are support staff and 2,763 are central and regional administrative staff, or are involved with electronic data processing, medical services, social services, food stamp administration, or child support enforcement. Support enforcement collects money from absent parents who are legally and financially responsible for child support. The department collects $1.25 million monthly with the help of the Attorney General's Office.

The administration of IDPA has two headquarter offices, one in Springfield and another in Chicago. There are four regional offices in Cook County and four downstate, 101 downstate county offices, 23 Cook County district offices, and a number of special service offices in Chicago.

Administrative improvements

In January 1974 the Cook County Department of Public Aid was legally (Public Act 78-363) incorporated into IDPA, but it took a full year before actual consolidation was complete. Thus ended 42 years of separate administration of two Illinois public aid agencies, a separation which had created havoc in the bureaucracy.

Early in 1975 new manuals were completed for AFDC and SSP. The new books replaced a 23-year-old, two-foot-thick hodge-podge of outdated memos and bulletins. Whether these manuals will materially assist caseworkers in their day-to-day work is not clear.

Caseworker accountability was instrumental, according to the department, in detecting and eliminating ineligible and overpaid cases. Income verification was one means of doing this. Another was through field staff use of lists identifying categories of clients most likely to be ineligible for aid.

In a massive effort to eliminate ineligibles, IDPA began a redetermination project in 1975. It affected all AFDC and GA recipients, along with all MA-NG recipients. By visiting every home, caseworkers verified the eligibility of all recipients — a Herculean task. Cancellation of 21,794 cases resulted from the initial project, and a second one brought cancellation of 20,676 more cases.

Due to these massive efforts, only 4 per cent of the department's AFDC caseload were found ineligible, and 5.3 per cent were overpaid during the last six months of 1976. Federal tolerance levels stand at 3 per cent for ineligibles and 5 per cent for overpayments.□

Table 3. Total program growth

	Total All Programs	
SEPT.	Persons	Dollar Amount
1976†	1,068,425	$103,817,904
1975†	1,086,618	98,885,297
1974†	1,019,309	81,721,977
1973	1,063,491	83,897,503
1972	1,013,719	71,738,529
1971	903,127	68,330,831
1970	678,288	45,830,656
1969	549,948	35,104,434
1968	494,799	26,475,726
1967	444,903	22,093,871
1966	391,143	19,551,141
1965	390,836	17,012,606

† SSI Program in 1974, 1975, and 1976; Aid to the Aged, Blind, or Disabled figures for 1974 do not include persons receiving a state supplement through the federal Supplemental Security Income (SSI).

Reprinted from *Illinois Issues*, May 1977

By ROY WEHRLE

Paperpushers or people servers

The caseworker

WELFARE can help people in dire need; welfare can hurt people by destroying hope and self-esteem and leaving them in a cage of dependency. Help or hurt, it all depends on how the instrument of welfare is used. The caseworkers whom government employs to handle this instrument have the potential to help many families to self sufficiency, but the limited field of action and responsibility given to caseworkers has seriously hampered this possibility. Like the factory worker with the wit and will but not the opportunity to do things a better way, the caseworker is often frustrated.

It is not just a coincidence that bureaucracies and factories operate in a similar fashion. Both seek efficiency through division of labor and rationalization based on the scientific method. Bureaucracy is social and administrative science in action. Because of its commitment to explanation, science seldom considers its object of study as a whole, be it the moon or a society. Rather, the object is broken into small pieces or functions which are analyzed in terms of action and behavior — density, velocity, chemical reactions, and so on. Bureaucracies function in much the same way. Functional tasks are defined, organized and then managed within bureaucracies. Every unit has its own important but limited task.

For example, the legislature directs the executive branch of government to provide specific kinds of assistance to particular groups of people. Services and people are cut up into standardized pieces, and officials are assigned to manage the parts so that the law is carried out. Depersonalization is not just a fancy word, it is the reality. No longer does the scientist remember that the wave length of 14 millimeters is the violet of a rainbow. Nor does the caseworker know that the referral case of a 12-year-old male subject with hyperactivity and a police record is the son of Mrs. James Doe and that she and he are both a very special part of the rainbow of life. The desire to see life whole rather than in pieces is not just romantic longing. It also results from the recognition that specialization may be efficient in a narrow, cost-benefit sense, but in the long run it can be terribly costly and detrimental to people helped and people taxed.

As Gary Adkins points out in his accompanying article, the complexity and magnitude of the welfare programs in Illinois are beyond easy comprehension. The problems of these programs are myriad, and simple solutions do not exist. Welfare complexities and costs are to a large extent a reflection of the social costs created by a technological society and its obsession with efficiency and comfort and things. This situation will not quickly change.

The caseworker is the personal link between the individual in need and the world of bureaucracy, regulations and assistance. The caseworker plays a crucial role in shaping the expectations and hopes of the person in need. There are approximately 4,500 caseworkers working for the Illinois Department of Public Aid (IDPA). A caseworker oversees an average of $390,000 of welfare payments each year for an average of 645 recipients. Some caseworkers determine eligibility for people who request assistance; others are responsible for the continuing checks to ensure that recipients remain eligible for assistance, while still others work with people receiving food stamps and those eligible for Medicaid. Still others, classed as services caseworkers, seek ways to obtain social services such as day care, counseling, etc. Workers in the Department of Labor are charged with obtaining job training and finding jobs for recipients under the Work Incentive Program (WIN). Back in the 1950's all of these functions were under the single umbrella of IDPA, and a single caseworker managed all aspects of helping and checking for a recipient. Today things are different. Generally, caseworkers are functionally specialized by type of welfare assistance. In some instances, a single caseworker may oversee two or three kinds of aid for a recipient or family, but no one caseworker ever oversees continuing eligibility, services, training and job placement for a person or family.

What is life like for the recipient who has several casework managers and doesn't always know which one to contact? What is life like for the caseworker who feels like an assembly line worker?

A caseworker today, particularly in the urban areas, seldom knows recipients as individuals or as part of a family or as members of a community. The caseworker sees income reports, Medicaid reports and day care requests. The people and the parts of their lives the caseworker sees come and go in a whirl of paper. The caseworker cannot know or feel responsible for what happens to most recipients.

There are several reasons for this change to specialized caseworkers "responsible" for many recipients. First, the number of recipients has increased much faster than the number of caseworkers employed by the department. As a result each caseworker now has supervision over a very large number of recipients and families, ranging from

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approximately 540 people per Aid to Families with Dependent Children caseworker, to 750 people per service caseworker (not all of whom need help), to 400 people per Supplemental Security Income caseworker. It is not possible to know, much less to periodically visit, this number of people. Second, as the regulations increase in size and complexity over the years, caseworkers have found it more and more difficult to master the "regs" over more than a narrow area. Third, it is argued that if the caseworker "function" is narrowed in scope, it becomes a technical job. Then a less qualified person can be employed, and the state will save money.

Finally, the content of the caseworker's job is now defined in terms of process, not end result. The caseworker is not expected to oversee the steps a person or family take toward self-reliance; that is, help, challenge, cajole and raise their hopes to assist them to independence without welfare assistance, or to better health, or to better functioning, or whatever is a practical goal for a person or family. Rather, the caseworker is expected only to do the specialized job of overseeing a particular part of the recipient's life: processing requests for day care or overseeing Medicaid use.

Specialization is the technological answer to the need for lower costs, in welfare as in factory production. Specialization is also an answer to complexity, for the caseworker if not for the recipient. Specialization seems obvious, efficient, and at worst, unavoidable. Yet this narrowing of caseworkers' functions and responsibility represents a slow slide toward treating people as objects, toward allowing those who are able to work to adjust to becoming wards of the state, toward not helping people to live. In this situation no one is really responsible for salvaging human lives. Caseworkers do their jobs, but they are not responsible for a person or for an outcome.

Few caseworkers in Chicago or East St. Louis receive the satisfaction of seeing a family they have helped make it on their own, or alternatively the dissatisfaction of seeing a family that seemed to be making progress fall apart. The rewards for caseworkers who want to help people should come from trying to build-in the grit and self-esteem and hope that can make a difference in recipients' lives. Today there are few such satisfactions or challenges for the caseworker. Yet it is the hope of helping that originally attracted many caseworkers to this tough line of work. Not finding it, many in past years quit after a short time. Now jobs are more difficult to find and caseworkers stay on, though often hampered and frustrated from accomplishing all they could accomplish under a more flexible system.

At present IDPA has no strategy for making effective use of caseworkers to help recipients attain financial independence. To be sure, financial and medical help are provided and this is no small help, especially to people in dire need. But if individuals are not boosted toward independence, help soon becomes the hurt of continuing dependency and loss of self-esteem. The result is second-class citizenship.

If the present system of assembly line caseworkers is not a good way of helping people, what can be done about it? The overall objective should be self-reliance for those persons and families where this is a possibility. If unemployment is high, this goal is not generally attainable. To move in this direction two changes are required.

First, more caseworkers would have to be hired. This would be costly, but a dime spent now might save a dollar of assistance payments in the future. But the budget is tight, and who will speak in favor of employing more bureaucrats! Second, caseworkers should be given broad responsibility for a reduced number of recipients. These caseworkers would have to be well-informed on eligibility, available services, job training and job opportunities.

Would HEW let Illinois return to a comprehensive services package for individual recipients under the supervision of a single caseworker? HEW led the way during the last decade in encouraging specialization of caseworkers. Now, Congress has changed the law and specialized caseworkers are no longer required. HEW, however, is not trumpeting this change across the land. Yet federal law still stipulates that job training and placement are to be provided by the Department of Labor. Changing this seems improbable until one notes that President Carter has declared that states should be given an opportunity to find better ways of meeting needs. Existing ways, he said, are not always the best ways. Will the present caseworker specialization achieve the President's goal? The answer is a resounding no. Too often, it may be added, state welfare programs follow meekly in the train of HEW pipers in Washington.

There are a few signs of change. Several officials of IDPA are beginning to believe that caseworker specialization has gone too far, reducing their effectiveness to help recipients and stultifying morale. A pilot program has been prepared for the new director, Arthur Quern, which would reintegrate IDPA's welfare aid under a single caseworker. Even if this were carried out across the state, the vital functions of job training and finding jobs would still be the responsibility of different officials with different knowledge and interests in the Department of Labor.

Welfare assistance is a dangerous instrument in another way. It causes communities, neighborhoods and relatives to disregard people in need because "welfare will take care of them." This distorted perception undercuts community responsibility. Family and community concern is the essential, if invisible, cohesion of our society. Sociologists call this the integrative function. Welfare assistance can sunder this integrative function, leaving the individual vulnerable and bereft of community support.

Jesse Jackson, director of Chicago's "Operation Push," is right when he says that parents who do not help their children with schoolwork have no business complaining about schools or teachers. Without responsible parents, schools can accomplish very little. And communities that are implicitly instructed by the state not to take care of their own, soon become communities in name only. Caseworkers, if they felt responsible and had departmental support, could build alliances with local church, civic and business groups to provide help, training and jobs for people in need.

Caseworkers should be the personal link between the necessarily impersonal state regulations and the individual needs of people. They should display the concern and creativity to help people become a part of a community and to find self reliance through work wherever possible. This is a worthy challenge for Director Quern and Gov. James Thompson.□

By ARTHUR J. FRANK

'Present laws are unnecessarily harsh'

Pot:

THE QUESTION of whether or not the penalties for possession of small amounts of marijuana (legally defined as any part of the plant cannabis sitiva) should be reduced is not only a legal one, but also involves social, economic, law enforcement and administration of justice problems.

Eight states — Ohio, Mississippi, Minnesota, Oregon, California, Alaska, Colorado and Maine — have already reduced their penalties to the point where the penalty for possession of small quantities of cannabis is a fine only, rather than imprisonment.

The issue has come to a point for several reasons:

- **Widespread use — 53 per cent of adults under age 25 have tried marijuana.**
- **New medical data — marijuana has been shown to be less harmful than alcohol or tobacco.**
- **The burden on the courts — over 20,000 cases a year.**
- **The diversion of law enforcement resources away from the control of serious crime.**
- **The failure of courts to impose the existing penalties. (In a 1975 survey of over 6,000 arrests in Cook County, no one was sent to jail.)**
- **The cost of enforcement — over $30 million per year.**

When the facts are viewed in an objective fashion, there is no doubt that our present marijuana laws are not in keeping with current scientific and medical data, are unnecessarily harsh, counter-productive of stated public policy and badly in need of revision. Present statutes divert law enforcement resources away from the control of serious crime, impose totally unjustified burdens on the already overcrowded criminal justice system and engender disrespect for our legal institutions.

More than any other single bit of evidence, however, is the fact that these statutes are simply not working. They do not work either from the point of view of discouraging marijuana use or "rehabilitating" the offender.

In this respect, the Drug Abuse Council stated that California's experience with severe criminal penalties for marijuana illustrated the law's minimal impact on the use of the drug. California had, until recent years, one of the harshest anti-marijuana laws in the country. A Drug Abuse Council survey in February 1975, while this law was still on the books, revealed that 30 per cent of California adults had tried marijuana at least once, perhaps the highest level in any of the 50 states. That same survey also revealed that of those Californians who were not currently using marijuana, the possibility of legal prosecution ranked at the bottom of the reasons for abstaining.

Since the late 1950's, when the penalties against marijuana were at their height, the use of the drug has increased to the point where, in its most recent report to Congress, the National Institute on Drug Abuse has reported that over 36 million Americans have tried marijuana, and 16 million use it currently. Cannabis has become a commonplace part of social activity on almost all levels. Aside from demonstrating the overall ineffectiveness of present criminal sanctions in inhibiting marijuana use, these statistics demonstrate that we are not dealing with a relatively small group of "criminals," but rather with a widespread social phenomenon.

Hundreds of studies have been done on the possible health hazards of using marijuana. Despite the fact that most of these studies were designed to identify any such harmful effect, no credible medical evidence has been found indicating a deleterious effect of marijuana use over either the long or short-term. Similar studies on alcohol and tobacco show conclusively that they are both much more harmful to the user than marijuana, reports Dr. Robert Du Pont, director of the National Institute on Drug Abuse. These findings have been confirmed by the President's Commission on Marijuana and Drug Abuse, the Report of the National Governors Conference, the Department of Health, Education and Welfare, and many others. The American Medical Association favors the repeal of criminal laws against marijuana users.

The greatest danger to the user of marijuana stems not from any property of the drug itself, but from the fact of its illegality. Users are forced into contact with drug pushers who have an obvious incentive to sell other, really dangerous drugs. Those arrested are subjected to the trauma of the traditional arrest

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ARTHUR J. FRANK
Chairman-elect of the Young Lawyers Section of the Chicago Bar Association, he coordinated CBA handling of H.B. 700.

H.B. 700 fails

THE House Judiciary Committee late in April sent to the House floor an amended bill which would reduce the severity of penalties for possession of marijuana. H.B. 700, sponsored by Rep. Harold Katz (D., Glencoe) and Rep. Lee Daniels (R., Elmhurst), originally would have made the possession of up to 30 grams of marijuana a civil offense with a maximum fine of $100. After amending the bill so that it does not decriminalize possession but reduces the severity of the penalties, the committee recommended the bill's passage by a vote of 16-0. While the Katz-Daniels bill failed to gain enough votes for passage on third reading in the House, it has gained support since last year and was placed on the consideration postponed calendar.

The vote, provided by Sen. Katz, was as follows:
Voting Yes, 79
Democrats: Birchler, Bowman, Brady, Breslin, Brummet, Byers, Caldwell, Chapman, C. Davis, J. Dunn, Ewell, Garmisa, Getty, Giorgi, Greiman, Harris, Holewinski, D. Houlihan, J. Houlihan, Huff, Jaffe, E. Jones, Katz, Kosinski, Laverdure, Levin, Lucco, Marovitz, P. Martin, Matejek, Matijevich, McClain, McLendon, McPike, Mudd, Mugalian, O'Brien, Porter, Pouncey, Richmond, Robinson, Satterthwaite, Schneider, Sharp, Shumpert, Steczo, Stuffle, Taylor, Willer, Younge, Yourell.

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By MICHAEL M. MIHM

'Some criminal sanction must remain'

What should the penalties be for marijuana?

Republicans: Antonovych, J. Barnes, Bluthardt, Catania, Conti, Daniels, Deavers, Deuster, R. Dunn, Dyer, Edgar, Gaines, Geo-Karis, Hoffman, Johnson, Keats, Kempiners, Macdonald, Mahar, McCourt, Molloy, Reed, Sandquist, Schlickman, Schoeberlein, Stanley, Telcser, Tuerk.
Voting No, 83
Democrats: E. Barnes, Beatty, Bradley, Brandt, Brummer, Capparelli, Christensen, Darrow, Dawson, DiPrima, Domico, Doyle, Farley, Flinn, Giglio, Hanahan, Jacobs, Kelly, Kozubowski, Laurino, Lechowicz, Luft, Madigan, McGrew, Mulcahey, Murphy, O'Daniel, Pechous, Redmond, Schisler, Terzich, Tipsword, Van Duyne, Vitek, VonBoeckman, Williams.
Republicans: Abramson, Adams, Anderson, Bartulis, Bennett, Boucek, Campbell, Collins, Cunningham, J. Davis, Ewing, Friedland, Friedrich, Griesheimer, Hoxsey, Hudson, Huskey, D. Jones, Kent, Klosak, Kucharski, Lauer, Leinenweber, L. Martin, McAuliffe, McBroom, McMaster, Meyer, Miller, Neff, Peters, Polk, Pullen, Reilly, Rigney, Ryan, Schuneman, Sevcik, Simms, Skinner, E. Steele, C. Stiehl, Sumner, Totten, Walsh, Wikoff, Wolf.
Voting Present, 3
Democrats: Mautino.
Republicans: Ebbesen, Wall.

MY POSITION is that some form of criminal penalties should be retained for the possession and/ or sale of marihuana in Illinois. The controversy surrounding marihuana at the present time is somewhat limited in that there has been no serious assertion made that the legislature should legalize or decriminalize the *delivery* of marihuana. The controversy centers on the issue of whether or not the *possession* of up to 30 grams (one ounce)of marihuana should continue to be a criminal offense or should in some way be decriminalized or legalized.

According to the current law, the Illinois Cannabis Control Act (*Illinois Revised Statutes*, 1975, Chapter 56½, section 704), the possession of not more than 2.5 grams of marihuana is a Class C misdemeanor. The possession of more than 2.5 grams, but not more than 10 grams of marihuana, is a Class B misdemeanor. And the possession of more than 10 grams, but not more than 30 grams, is a Class A misdemeanor. The effect of the current law is that the possession of a couple of marihuana cigarettes is a less serious offense than many traffic vioations.

I am not wedded to any specific recommendations as to *what* criminal sanction should remain for the possession of up to 30 grams of marihuana. I would not be terribly upset if the law were changed to read that the possession of up to 30 grams of marihuana was a Class C misdemeanor. My concern is that some criminal sanction remain. The reasons that I am opposed to the decriminalization of marihuana in Illinois are as follows:

1. Marihuana is still physiologically and psychologically an unknown. The medical effects of the drug are not yet fully comprehended. To take permanent action on the legality of consumption of the drug in our community at this time would be premature.

2. Decriminalization of marihuana will not save taxpayer money. It is true that if a police officer goes to court to testify on a case, in many communities around the state he is paid overtime for that appearance. It is also true that in a large percentage of cases the marihuana arrest is incident to some other arrest and the apprehension for violation of the Cannabis Control Act was not the result of an investigation conducted for that purpose. A study done by the Los Angeles Police Department in 1974 showed that 88.4 per cent of the marihuana arrests conducted in Los Angeles in the first three months of 1974 were made as the result of chance encounters by uniformed field officers. In an article by Chief Edward Davis of Los Angeles published in the *Police Chief* magazine (March 1975), Davis said:

> Significantly, in more than 85 per cent of the cases, it was not planned efforts of the police which brought the marijuana user into contact with the criminal justice system, but rather the social problems accompanying his own drug usage. For example, police contacts frequently originate from erratic driving or violent physical confrontations involving family members or neighbors.

In light of this statement, it is also apparent that decriminalization of marihuana would not have the effect at all of freeing police to work on "more serious crimes which occur in the community," as suggested by many proponents of decriminalization. All proposals for decriminalization that I have seen contain the substitution of a civil penalty which would require a due process hearing with presentation of physical evidence and officer testimony if the defendant demanded a hearing.

3. Those who are in the business of selling marihuana are also in the business of selling other drugs — LSD, MDA, PCP, STP, cocaine and heroin. Marihuana is only one of the wares made available by the pusher. It is true that there are a number of people in any community, typically young people, who engage in the casual delivery of drugs to friends and acquaintances. But for anyone to believe that the majority of drug deliveries which occur in Illinois involve that type of casual delivery is to assume an extremely naive posture. Every community has its established drug dealers, and typically they sell a variety of drugs. If we were to decriminalize marihuana in Illinois, we would be exposing persons buying marihuana to a sales pitch to possibly more dangerous drugs when purchasing marihuana.

4. Decriminalization of marihuana would not encourage respect for the law. One of the major contentions of the proponents of decriminalization is that since a large number of young people use marihuana knowing it to be in violation of the law, that use conse-

Continued at top of page 122.

MICHAEL M. MIHM
State's attorney of Peoria County, he is a member of the Dangerous Drugs Advisory Council.

MIHM *Continued from page 121.*

quently engenders in their minds a disrespect for other laws. This is hogwash! Many young people who use marihuana are using it because, among other reasons, they are responding to pressure from their peers, in the same manner that young people 15 years ago were going out on a country road to drink a six-pack of beer, knowing that it was in violation of the Illinois liquor laws. It would appear to me that a great deal more disrespect for the law would be engendered if individuals could possess an amount of marihuana without violating the criminal law, but had to go to law breakers (dealers) to buy it.

5. No marketed machine exists to readily measure the level of marihuana in the blood. At the present time there is no machine on the market, such as the breathalyzer machine for alcohol, which can readily determine the existence or the degree of presence of marihuana in the body. To legalize or to decriminalize the use of a drug which has the same potential as alcohol for inducing intoxication without the ability to readily determine an abuse of that drug while a person is using a motor vehicle would not be responsible.

6. Philosophically speaking, marihuana is a danger to society. We already have too many crutches interfering with the quality of life in our community. Some say: "Marihuana is no better or worse than alcohol." Question: Are we proud of the level of abuse of alcohol in our community? How many legal intoxicants can we afford as a society?

The generation of the 1970's is felt by many to be the "liberated generation," free of the old prejudices and hangups of generations that have come before it. If that is true, then this generation should also be the one to reject the chemical and biological shackles which are becoming more commonplace every day. We may reach a point in the not-too-distant future when most people in our society deal with unhappiness by using intoxicants. The basic purpose of law is the survival of society. To snicker or giggle or make fun of the danger which is present in our society today because of its ever increasing dependence on drugs is similar in my mind to laughing at the hangman. In fact, if you follow my premise out to its logical conclusion, you might foresee a day when government actively encourages the unlimited use of drugs, for the reason that, as long as reality awareness is impaired, people will not ask questions that need to be asked of government.

A number of white, middle-class, young adults have been arrested in recent years for possession of marihuana. If the truth were known, much of the impetus behind the present movement to decriminalize the possession of marihuana comes from the white, middle-class parents who are alarmed at the fact that *their* son or daughter might be arrested and prosecuted. Such parental anxiety over the possibility of such an arrest of their child is understandable. But to remove the criminal penalties from marihuana for that reason alone would be extremely hypocritical.

In conclusion, action to decriminalize or legalize the use or sale of marihuana would be irreversible. Once society accepts an intoxicant into noncriminal use, it is impossible to change the status of that drug back to where it was before. In view of the above discussion, it should be evident that we are not prepared to make a permanent decision on the issue of marihuana.□

FRANK *Continued from page 120.*

processing, including incarceration pending bond, fingerprinting, photographs and a permanent arrest record which can stigmatize them for life. Over half of those arrested are under the age of 21. Users of the drug know that their behavior brands them as criminals. Given their awareness of the fact that the drug is relatively innocuous when compared to tobacco or alcohol, this seems an inconsistent and discriminatory sanction which tends to alienate them from our legal institutions.

The greatest cumulative burden of the present penalties falls not on the user, or even dealer, however, but on law enforcement agencies and on the courts. In Illinois alone, according to the Department of Law Enforcement, there were some 20,000 arrests for possession of under 30 grams (one ounce) of marijuana. The Illinois Economic and Fiscal Commission estimates the cost to the taxpayers for these arrests at $30 million. After the state of California reduced its penalties in 1975, it reported a first year saving of $25 million.

The burden that these 20,000 arrests a year place on the courts is substantial. It is common knowledge that the courts, particularly in the more urban areas, are dramatically overcrowded and dealing with a caseload exceeding their ability to make intelligent dispositions of many of the cases heard. The elimination of this caseload would be one immediate benefit of a penalty reduction.

Many of the arguments which were popular in the 1930's are still being used by those who oppose revision of these statutes, despite the mounting evidence that they are not valid. The most commonly heard of these arguments is that marijuana leads to hard drugs. "There is simply no valid evidence of anything inherent in cannabis or cannabis use which would make the marijuana user likely to become a heroin or other opiate user," reported Dr. Lester Grinspoon of Harvard University. Dr. Grinspoon's findings have been confirmed repeatedly. All of the data, including the reports of the Department of Health, Education and Welfare (HEW) and the National Commission on Marijuana and Drug Abuse, have stated that there is no property of marijuana which is either addicting in and of itself, or which leads to the use of other drugs.

Another commonly heard argument against reducing penalties is that it will encourage use of marijuana. Careful followup studies have been done in Oregon, which "decriminalized" in 1973. The three studies, which were sponsored by the Drug Abuse Council, were designed to assess the impact of the Oregon law. The surveys were conducted yearly after the new law went into effect. The report of the council was that "there has been absolutely no increase in marijuana smoking since criminal penalties were removed more than two years ago." It is just as illogical, therefore, to say that reduced penalties would encourage use, as it is to say that existing penalties are an effective deterrent.

Public attitudes towards marijuana smoking have changed dramatically over the past few years. Eighty-six per cent of the adult population now oppose the imposition of any jail penalty for minor marijuana offenses, reports Response Analysis Corporation in a study done in 1976 for HEW. Despite this consensus among the public and the refusal of courts to impose jail sentences, the arrests continue.

The legislature should begin to develop a rational long-term marijuana policy for this state.□

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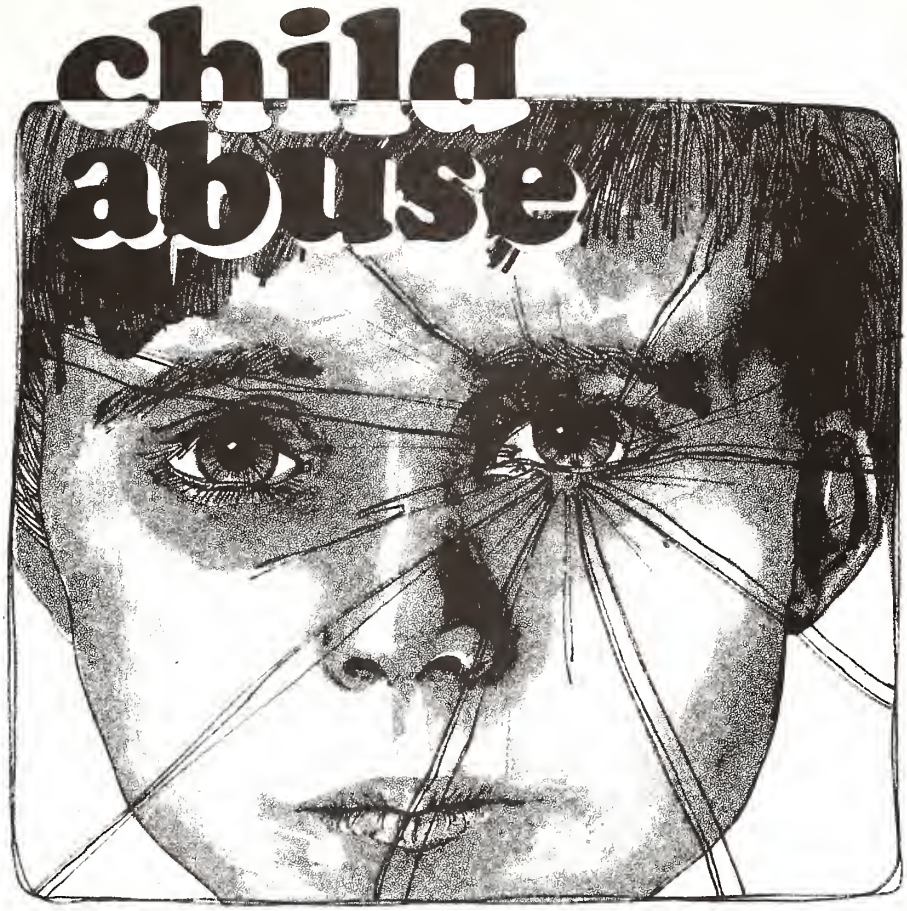
child abuse

By WILLIAM A. SYERS



BEFORE he was beaten to death by them, Johnny Lindquist, a six-year-old Illinois boy, described his parents in this way: "You are not fit to be called human beings. Animals take better care of their young."

Normally this would be a shocking statement from a six-year-old. It is not shocking at all coming from a young boy who died before his seventh birthday in a coma with his skull fractured and his frail body covered with large red welts. Born on August 28, 1965, Johnny Lindquist immediately joined an older sister at St. Francis orphanage. His mother was tubercular. He lived in several foster homes during his short life. His last foster parents, Robert and Francis Karvenek, moved him to a farm in Wisconsin where he flourished in the wholesome environment. He loved his foster parents and the pony they gave him. He lived with the Karveneks for three-and-one-half years. In 1970 his natural parents began legal proceedings to regain custody. Johnny prayed every night that he would not have to return. On a previous visit there was evidence that he had been mentally and physically abused by his father. During the time he lived with the Karveneks, they never received any letters from the Lindquists.

The Lindquists had five children. Mr. Lindquist had been unemployed since 1967. A social worker apparently advised the Lindquists that their monthly welfare check would be larger if they regained custody of the child. On February 25, 1972, Johnny Lindquist was returned to his natural parents. There is no official record of a court order for that action. Judge Thomas Rosenburg was quoted in the Chicago newspapers as saying that the Illinois Department of Children and Family Services took it upon themselves to return the child to his natural parents. After the case hit the papers, an assistant state's attorney lamented, "We have a Johnny Lindquist every month, but nobody hears about it."

The Lindquist case spurred new legislation in the area of child abuse in Illinois. This article investigates the progress those laws have made in dealing with the growing problem of child neglect.

WILLIAM A. SYERS
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Twelve years have passed since Illinois first enacted a law requiring reporting of child abuse, and a great deal of information has been collected. But those who have analyzed the statistics may question whether the Illinois Department of Children and Family Services (DCFS), the courts, and local welfare agencies have yet to come to grips with the problem. The facts highlight these shockers:

- Mothers are the leading child abusers. The majority of abusive parents are repeaters and are known to social service agencies.
- More than two-thirds of all child abuse and neglect cases occur in one-parent homes. A higher than average number of abused children are illegitimate.
- Child abuse occurs at every level of society. And most of the abusers are, by ordinary standards, responsible persons — only 10 per cent of the parents who abuse their children have serious mental illness or deficiencies.

A profile based on the actors most commonly found in child abuse cases is as follows: The typical child abuser is a young mother. She is probably under 24 years of age, and her child is either illegitimate or premature. It is likely that she has more than one child, is alone in raising and supporting the child and lacks money to make ends meet. She is most likely to be white, and there is a better than average chance she lives in Cook County. The mother often has a recognized potential for abuse and has dealt more than once with an agency in the field.

Perhaps the most alarming statement comes from Vice President Walter F. Mondale. Writing in *Trial* magazine (May-June 1974), the then senator from Minnesota said that if estimates by experts are truly indicative of the problem, child abuse could turn out to be a more frequent cause of deaths among children than such diseases as muscular dystrophy, leukemia, cystic fibrosis or even automobile fatalities.

What the law covers

A Chicago physician, Dr. Daniel J. Pachman, working with the Illinois Commission on Children, prepared the first draft of an abuse reporting law in Janary 1962. The Abused Child Act of

1965 was succeeded in 1975 by a new law. This statute, the Abused and Neglected Child Reporting Act *(Illinois Revised Statutes,* 1975, Chapter 23, sections 2051-2061), defines abuse and neglect and lists those who are required to report abuse and neglect of children. In addition, the new act authorizes permissive reporting by any other person presumed to be acting in good faith. (The problem before with ordinary citizens reporting abuse and neglect was they had no immunity from suit if they could not prove their allegations in court.) Chief sponsor of the new law was Sen. Philip J. Rock (D., Chicago).

The new law allows physicians to retain temporary protective custody of children they believe might be in imminent danger if returned home. The physician notifies the Department of Children and Family Services (DCFS) so that the agency can go to the Juvenile Court to retain temporary custody of the child. Physicians are also authorized to take color photos or x-rays of an injured child — to preserve evidence of the injuries — at state expense. The act retains provisions for a confidential central registry of reports of child abuse and neglect. The 1975 legislation also amended the Juvenile Court Act to strengthen the provisions regarding the appointment of a guardian *ad litem* (a special, court-appointed guardian) for minors. It mandated that the courts appoint a guardian *ad litem* when the minor before the courts was involved in a child abuse or neglect petition. The role of the guardian is to look out for the child's interests in cases where these run counter to those of parents charged with abuse or neglect.

How many cases?

Cases of child abuse and neglect reported to DCFS have risen steadily since fiscal year 1966, the first year for reporting. In that year, 483 cases were registered with DCFS. By 1973 this had more than doubled, to 1,160. By 1975 the figure had doubled again, 2,801. After the 1975 legislation, it shot up to 6,748 in fiscal 1976. Permissive reporting by private citizens, as authorized in the 1975 law, had increased more than 1,200 per cent.

The role of the private citizen in protecting children from abuse becomes apparent when the sources of child abuse reports are analyzed. In fiscal year 1976, almost 37 per cent of child abuse reports came from private citizens and miscellaneous sources. About 21 per cent were reported by hospital personnel other than physicians. Law enforcement agencies were responsible for approximately 21 per cent of the reports and schools for 11 per cent. Interestingly, physicians in hospitals account for only about 4 per cent of child abuse reports, and private physicians, sending in a little over 1 per cent of the reports, are only slightly better sources than day care centers and babysitters. Public aid agencies are lowest on the list.

Child beating accounted for more than a third of the cases reported in 1976 (2,566 cases or 38 per cent of the total). This was followed by neglect, 2,436 cases. Other types of abuse were: injuries of more than one type, 472; sexual abuse, 352; burns, 183; malnutrition, 147; fractures, 120; poisoning, 3; not reported, 4; and all other, 465. In addition, there were 52 deaths with 43 dead on arrival at the hospital and 9 expiring later.

Two-fifths of the 1976 cases involved children from 3 through 9 years of age. About a fourth of the children were under 3, and about 35 per cent were 10 or older. Those suspected of abuse or neglect were mothers in 48.9 per cent of the cases, fathers in 16.0 per cent, both mothers and fathers in 9.9 per cent. Others included stepparents, foster parents, mother's boyfriend, brothers or sisters, other relatives, babysitters and neighbors.

What can be done?

A provision desperately needed in Illinois for eliminating child abuse and neglect was pointed out by Mary Lee Leahy, director of DCFS during the Walker administration. She told the National Committee for the Prevention of Child Abuse in 1974: "It distresses me that we have all sorts of statistics and abuse reports . . . but nowhere in our statewide statistical system do we record how many counseling sessions have been provided for abusive parents." This was still the situation early in 1977. DCFS spokesmen can provide the number of man-hours worked by lay therapists and volunteers, but they can't tell you how much this has helped.

If child abuse is a significant problem, then the way to solve it, according to those who have studied the problem, is to deal with it where it originates: with the parents. Placing children in temporary protective custody or foster care does not solve the problem. Studies in Denver indicate that nine-tenths of all child abuse can be dealt with effectively in the home, with therapy for the parents or with a nine-month trial separation. During the separation, abusive parents earn their children's return by actively receiving assistance and extensive therapy.

The DCFS is authorized by law to provide social services to families of abused children, but department workers complain they can only work with the parents when the parents are willing to cooperate. Parents, they contend, fail to show up for appointments or to answer phone calls. The courts can, of course, force parents into therapy as part of their penalty. The difficulty that has arisen is the result of a common assumption of expertise on the

What is child abuse?

"Abuse" means any physical injury, sexual abuse or mental injury inflicted on a child other than by accidental means by a person responsible for the child's health or welfare.

"Neglect" means a failure to provide, by those responsible for the care and maintenance of the child, the proper and necessary support, education as required by law, or medical or other remedial care recognized under State law, other care necessary for the child's well-being; or abandonment by his parent, guardian or custodian; or subjecting a child to an environment injurious to the child's welfare (*Ill. Rev. Stat.,* 1975, Ch. 23, sec. 2053).

Who must report?

Any physician, hospital, surgeon, dentist, osteopath, chiropractor, podiatrist, Christian Science practitioner, coroner, school teacher, school administrator, truant officer, social worker, social services administrator, registered nurse, licensed practical nurse, director or staff assistant of a nursery school or a child day care center, law enforcement officer, or field personnel of the Illinois Department of Public Aid having reasonable cause to believe any child with whom they have direct contact has been subjected to abuse or neglect shall immediately report or cause a report to be made to the Department. In addition to the above persons required to report suspected child abuse and neglect, any other person may make a report if such person has reasonable cause to suspect a child has been abused or neglected (*Ill. Rev. Stat.,* 1975, Ch. 23, sec. 2054).

part of the courts. The courts need help specifically from the agencies which are involved in each individual case. DCFS is one such agency. In December 1976, Illinois Juvenile Court Judge William S. White was forced to order DCFS to submit annual and biennial progress reports on children under its jurisdiction. Judge White cited over 15,000 violations of the reporting requirements by DCFS. Such progress reports, if submitted accurately and in a timely fashion, could prevent tragedies such as the Lindquist case.

A new approach?

But the 1975 legislation adopts a new approach: state money to involve local agencies in approved abuse programs. Before this can become fully effective, DCFS will probably need to maintain a list of services available in each area: availability of DCFS caseworkers, psychiatric counseling, group therapy, lay therapists, surrogate mothers, visiting nurses, parents anonymous groups, availability of short-term and long-term placement, homemaker services, day care centers, babysitting services, family planning agencies, job counseling, training and referral services, home improvement services, and "crisis nurseries."

Crisis nurseries are not currently used in Illinois. They allow parents with abusive potential to drop off children indefinitely in times of distress. They are preventive in nature, and they help parents deal with their problems before court intervention becomes necessary.

Legal students of the problem of child abuse have pointed to problems of evidence which arise because the offense takes place in the home, and those who witness it firsthand often can't be compelled to testify because of their relationship to the abusive adult. While the legislature probably cannot or should not dictate standards of evidence to the courts, some argue that the Juvenile Court Act utilizes shifting standards of proof and that a degree of uniformity should be written into the law.

The use of criminal penalties for child abuse seem to have been discontinued except in cases of severe abuse or death. The courts and social agencies have learned through experience that there is little therapeutic value in the criminal prosecution of suspected abusive parents. At best, the court process embitters parents against the child protective authorities. An acquittal equals approval of abusive conduct or neglect. The behavior or potential to abuse is not altered by either a prison term or a suspended sentence. Indeed, some experts argue that criminal prosecution deters abusive parents from bringing injured children in for medical treatment. But the criminal penalty sections which remain in the child protective statutes are rarely used because most actions in this area are of such a serious nature that the abusive parents are charged under the criminal code with more serious offenses, such as assault, manslaughter, murder or taking indecent liberties with a child.

The extent of child abuse in Illinois is now clear, but what is not so clear is what society intends to do about it. Society, in the end, pays for the suffering of abused and neglected children. They are the children of today who can't learn and become juvenile delinquents. They are the adults of tomorrow who may be seriously mentally ill. Some become major criminals. Worst of all, they can become another generation of parents who pass on the pattern they have been taught: they become parents who abuse and neglect their own children.□

Task Force reports on abuse of retarded children

REPORTS of child abuse in state-supported child care facilities prompted the governor last May 19 to appoint a special task force to study the problem. The 18-member panel was formed after allegations of staff cruelty and negligence toward mentally retarded children living at Windgate House in Woodstock.

Windgate had received a great deal of publicity after newspaper reports of alleged abuses that included putting tabasco sauce on the tongues of mentally retarded children as a form of punishment, as well as giving cold showers or denying meals, and, in some cases, striking children on the hands and face.

The Illinois Department of Children and Family Services (DCFS) notified Windgate on May 13 of its intent to revoke the facility's license. The department listed a bill of particulars on abuses ranging from tying children to toilets to allowing one to drown and seven others to become injured due to negligence.

The task force said in its interim report of June 15 that such abuses as were alleged at Windgate came about because of "a crazy quilt" system of health care agencies with overlapping responsibilities "which has historically failed to protect the very children who need the most protection." The report went on to say "that state activities . . . may have actually contributed to encouraging conditions in which abuse could occur."

Cleo Anderson, a member of the task force, and an inter-agency liaison and coordinator with DCFS, admits that "there may be a case for closer coordination between agencies" in monitoring care of the mentally retarded. Anderson says DCFS was monitoring Windgate at the time of the alleged abuses, but "we couldn't do it around the clock. There aren't enough monitors for that."

The task force's interim report said that no state agency had been "derelict in discharging its mandated charge." The report said, "The problem seems to be a system which lacks the specificity of assignment and the correct standards against which to measure the quality of service to hold anyone accountable."

Such standards and specific divisions of responsibilities were to be outlined by the task force in its final report to the governor August 1. According to Ray Unterbrink of the Association for Retarded Citizens, the findings will "probably require mostly executive action."

Unterbrink believes that while active, physical "abuse by commission" as was alleged at Windgate gets the headlines, "passive abuse" is an equally prevalent problem in dealing with the retarded. Such abuse, which entails not helping a child develop to the fullest, may also be addressed in the final report.

In the meantime, investigations by four state agencies of the Windgate home have proceeded, and the hearings and court battles over license revocation there may continue for quite some time. (See *Names,* p. 29 for members of task force.)

Business climate in Illinois: Is the picture really bleak?

By BOB SPRINGER

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HOW BAD is the business climate in Illinois? According to the Illinois Manufacturers' Association (IMA) and the Illinois State Chamber of Commerce (ISCC), the state's industry is in the midst of a major exodus to the "sunbelt" states of the South and Southwest. The IMA and the ISCC say that jobs are being lost to Texas, Oklahoma, Arkansas and other southern states. They are right; jobs are being lost, but how many and for how long?

Answering these questions is not easy because the business climate, like the weather, is constantly changing. But, it appears that Illinois fared better than many other states in the Northeast and Great Lakes industrial region. That is not exactly good news, and business interests are still worried.

In weekly newsletters, the IMA and the ISCC maintain that the sunbelt exodus is being fed by unemployment and workmen's compensation insurance rates that are cutting into industry's profit margins. Local communities are also putting a squeeze on business, the groups claim, by hiking corporate taxes to pay for industrial pollution of sewage, land and other environmental systems.

Tax incentives

In recent testimony before legislative committees of the General Assembly, spokesmen for the IMA and ISCC cited tax incentives offered by "sunbelt" states to heavy and light industry willing to transfer operations there, and warned that if Illinois continued its "anti-business" attitudes, it could find itself in a dilemma comparable to New York, Ohio, Pennsylvania, Michigan and other northern industrial states.

At a meeting in mid-April with Gov. James R. Thompson concerning electric utility rate reduction legislation, dubbed "lifeline," public power company officials cited a report done for the ISCC that indicated industry's general disenchantment with what they said was a deteriorating business climate. The report, conducted by Central Surveys, Inc., of Shenandoah, Iowa, indicated Illinois industries consider the state's taxes too high and unfair, labor's wages too high without corresponding productivity, and federal taxes too high without an equitable share being returned to the state. Nearly 80 per cent of the respondents (1,083 businessmen and industry officials were questioned) said they felt Illinois had an unfavorable business climate, and nearly half of the large manufacturing firms questioned said they have invested less new capital in Illinois in the last 10 years than in other states. Finally, about a third said that they planned no facility expansions in Illinois but would build new plants out of state.

Just about anyone worried about Illinois' business climate has a detailed story about how some company decided to move elsewhere, or expand elsewhere, because of the "anti-business" attitude of state government, the unreasonable compensation insurance rates or the extremely high wages won by organized labor in recent contracts.

For example, when workers went out on strike at the Bunn-O-Matic headquarters in Springfield recently, the company packed up and went to Iowa. But what might be a more typical instance is that of a relatively small manufacturing company, Burgess-Norton, Inc., of Geneva. A wholly-owned subsidiary of a multi-national concern, the smaller automotive parts manufacturer was hit as hard during the slump of 1973-1974 as any company in the industrialized North. Inventories were allowed to deplete, an entire shift of jobholders was laid off for nearly a year. Then business began picking up in early 1976. Orders began coming in again. Employees were put back on the payroll and inventories returned to normal levels. Then the company decided it needed to expand its warehouse space. But because of what it called "unprofitable conditions in Illinois," and because transportation systems have expanded some distribution capabilities, the company built its new warehouse outside Tulsa, Okla., and hired its workers from that area.

Incidents such as these, coupled with the views of business officials, could lead one into believing the exodus to the sunnier climes of the South and Southwest is in full swing. But some studies do not fully support this contention; the loss of jobs appears to be much less severe.

Richard Kolhauser, the assistant director of the state Bureau of the Budget (BOB), said that while there is, indeed, a movement of industry and labor out of Illinois; it is not dramatic and does not, in fact, represent anything more than a normal and equitable redistribution of the nation's production capabilities.

Kolhauser's comments are supported by an economic development research report conducted for the U.S. Department of Commerce which says that statistics showing changes in tax rates in comparison to adjusted personal income, and statistics indicating the migratory patterns of industry and labor, should be viewed in the context of tax and labor force levels in each area over a fairly long period of time. That is, when records provided by the Social Security Administration show that 92,000 workers moved into the "sunbelt" states between 1973 and 1974, and

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that 28,000 workers moved out of the Great Lakes area states during this period, it is important to remember the total labor force in the Great Lakes region was much larger than in the "sunbelt" states to begin with. Also, Ohio and Michigan were hit harder than Illinois during 1973.

Entitled "A Myth in the Making: The Southern Economic Challenge and Northern Economic Decline," the 48-page report published in November 1976, indicates that the shift from the North to the "sunbelt" region is a reality. But the report also indicates that Illinois was the industrial state perhaps least affected by what economists have called the worst economic depression in this country since the Great Depression of the 1930's.

For example, after making adjustments for the cost of living, Illinois citizens were shown to have more disposable per capita income than the citizens of the other 24 states the study compared. The studies indicate that the migration of labor out of Illinois (whose 1976 force was put at nearly 4.5 million, excluding agriculture) to the "sunbelt" states was less than any other northern, industrialized state. And according to the U.S. Bureau of the Census, the "sunbelt" south gained only 4.6 per cent in population due to actual movement of workers from the North to the South from 1974 through 1976. All things considered, the study seemed to indicate that the movement to the "sunbelt" region from the North is definitely there, but so far has not been terribly disruptive.

Federal dollars

Illinois businesses point out that the ratio of federal taxes paid to federal dollars returned is not helping the state's business climate. The studies show that the federal government spends more money per person on welfare and retirement programs in southern states than it does in Illinois, even though, on the whole, more money per person goes to Northerners than Southerners for these programs. At the same time, Illinois taxpayers in 1975 paid the second highest of the 25 states compared in percentage of personal income in federal taxes. It seems clear that Illinoisans are not getting their fair share of federal dollars in welfare and retirement programs. There are compensations, however. Illinois' per capita income was higher in 1975 at $6,789 than any state's except Connecticut. The Commerce Department reported in May that the national personal income average rose to $6,441 in 1976 from 1975's national average of $5,903. Personal income rose by 9.1 per cent in 1976 across the nation, the department adds.

In the area of federal taxes collected per person and federal dollars spent per person for all programs, Illinoisans (including children and the aged) paid more to the federal government in personal and corporate taxes than individuals in all other states except Connecticut and New Jersey. And Illinois citizens got back less federal money per capita than any of the "sunbelt" states. But again, the report is quick to note that Illinois residents have one of the highest adjusted personal income levels in the country.

On the labor scene, another report shows that Illinois' loss in manufacturing jobs has nearly been offset by a growth in the number of persons working in wholesale, retail and government employment. The report, called "Illinois Economic Growth Study," was conducted for the state chamber by Dr. A. James Heins of the University of Illinois and was published in July 1976 after nine months of study. Heins' study indicated that tax pressures are tight in Illinois, but compared to other large, industrialized states, Illinois is faring well.

One reason for Illinois' continuing economic strength in the face of fluctuating national conditions is the state's diversified economy, says BOB's Kolhauser. Illinois' general employment distribution is very close to that of the nation's as a whole, Kolhauser says. Illinois ranked first in agricultural and manufactured exports in 1974 and 1975, according to state budget bureau fig-

ures, and ranked second in the nation for the number of insured banks and savings and loans.

Another economic indicator used by the state Department of Business and Economic Development, shows that Illinois and Texas had the smallest decline in the growth rate of its total, non-agricultural labor force when the recession hit with its full impact in early 1974, continuing in some states even through the first half of 1977. Again, says Kolhauser, this was because of Illinois' diversified economy, which includes major rail, air and shipping lines operating out of Chicago, a concentration of large banks and insurance companies keeping capital investments at growth levels and the nation's largest high sulfur coal reserves. The U.S. Department of Labor reported that through 1975, Illinois' personal per capita income grew only slightly less than did the state's manufacturing investment rate.

Mixed report

The studies discussed above give a mixed report of the business climate in Illinois. All of them contain both good and bad news, and — depending on which is stressed — either an optimistic or a pessimistic outlook of Illinois' business climate can be arrived at. The bottom line, in short, is not easy to determine. By way of summary, however, this much can be said. Illinois, like every other state was hurt by the recent recession, but not as badly as most states. Federal tax dollars paid by Illinois individuals and businesses are comparatively high, and federal aid dollars returned to the state are comparatively low. Personal income in Illinois is quite high in comparison with other states, so is disposable income. The much-discussed exodus of business and workers to the "sunbelt" is not nearly as bad as in other northern states, and, although it is a source of continuing concern, this movement should be seen as part of a steady and long-term redistribution, and not the beginning of economic disaster for the state. Finally, Illinois' business climate, like the weather, will continue to show many temporary variations, but the state's strengths in agriculture, industry, transportation, coal and finance should insure that it remains generally stable over the long haul.□

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By ED NASH

When should the doors close?

Open meetings act

Can formal action be taken by a public body during a closed meeting? This issue rose out of a 1975 meeting of a Lake County board which was closed to the public in order to discuss and act on a land acquisition ordinance. Whether the meeting set a dangerous precedent or is legitimately provided for in the state's open meetings act may be decided by the Supreme Court and could spur proposals for changes in the statute, which is already known as one of the toughest in the nation

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BEHIND CLOSED DOORS — for the first time in its 17 years, the Lake County Forest Preserve District board of commissioners met in secret session. In October of 1975 the commissioners — who also serve as the Lake County Board, the county's governing body — barred the public in order to discuss land acquisition. The board's attorney said that under an unappealed Illinois appellate court decision they could meet privately. At the same time, the Lake County state's attorney and a Lake County legislative leader said they intended to move on judicial and legislative fronts to put a halt to such a practice.

The reverberations are still being felt. Over a year later, Robert Sabonjian, the colorful and controversial mayor of Waukegan, the Lake County seat, is in on the act. Sabonjian has charged that the Forest Preserve District is pulling a "land grab" on Waukegan city recreational lands and has threatened to haul the district before the U.S. Supreme Court.

The legal issues surrounding the controversy are all related to the Illinois open meetings act. The 20-year-old state law, which was strengthened considerably a decade ago, was designed to let the citizenry know what their governmental bodies are doing. The statute affects some 6,500 state and local governmental bodies, the largest number by far of any state in the union.

Whether the law is good or bad, effective or unnecessary, depends on who is talking. "It's the stiffest, the best of any such law in the nation," says Anthony Scariano, attorney of Park Forest, the former state legislator who sponsored the Illinois law. "You could drive a Mack truck through all the others," says Scariano, speaking of similar laws in 35 other states. But Donald T. Morrison of Deerfield, the land acquisition attorney for the Lake County forest preserves, calls the open meetings act "really a sop to the press . . . the press could find out what it wanted to know without the law." Morrison also raises another question: "Why does the open meetings act ignore the executive branch of government?" It is in that area, he suggests, where such a law is really needed.

The Illinois law, however, does not appear to single out the legislative branch of government when it says: "It is the public policy of this state that the public commissions, committees, boards and councils and the other public agencies in this state exist to aid in the conduct of the people's business. It is the intent of this act," the law goes on, "that their actions be taken openly and that their deliberations be conducted openly."

Changes in the law

Scariano points out that before 1957 when the law was enacted, there were far too many cases of governmental bodies carrying on their business like a private corporation. Even after the new law was on the books, it was argued that it did not apply to meetings where only discussion, not formal action took place. Ten years ago exceptions were clarified, coverage extended and the law strengthened generally. Extensive requirements were also added for providing proper notice of meetings of public bodies. The law states:

"All meetings of any legislative, executive, administrative or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies . . . including but not limited to committees and subcommittees . . . supported in whole or in

Open doors or closed doors; that is the question. And if they're closed, when and how often and for what reason?

part by tax revenue, or which expend tax revenue, shall be public meetings . . ."

"It goes without saying," Scariano states, "that such special purpose local governmental bodies as library boards, sanitary districts, drainage districts, mosquito abatement districts, park districts, etcetera, are also required to conform to the Act. Also covered, though frequently needing reminders of it, are such agencies as the Illinois Tollway Authority, the various state university boards of trustees or regents or governors, county boards of supervisors or commissioners, zoning boards, boards of tax appeals, plan commissions and boards of election commissioners."

Exceptions to the law

There are, however, specific exceptions. They include the Illinois Commerce Commission, Pardon and Parole Board, Youth Commission, grand and petit jury sessions. Collective bargaining sessions, meetings about the appointment, employment or dismissal of an employee, student disciplinary cases and the judiciary are also excluded. It is also worth noting that the Illinois General Assembly carefully exempted itself, along with its "committees or commissions." (But the Constitution [Article IV, Sec. 5c] mandates open meetings of the House and Senate and their committees unless a chamber directs otherwise by a two-thirds vote of the members elected to that house.)

Another exemption is sessions of public bodies where the acquisition of real estate (but not personal property) is considered — like the Lake County Forest Preserve District meeting where the people were barred. However, as Scariano says, "the exceptions provide that closed meetings may — but not necessarily must — be held in such cases. All other portions of such meetings, if any, must be open to the public." Scariano adds that "home rule" governmental bodies provided for by the new Illinois Constitution are also under the umbrella of the open meetings act.

Given the clearly delineated coverage of the law, it was a bombshell when George R. Bell, president of the Lake County Forest Preserves, called a "special executive session" on the advice of Morrison, the district's attorney. The meeting was called "for the sole purpose of considering and acting on an ordinance for the acquisition of certain lands for Forest Preserve District purposes in Lake County, Ill." The key word in this statement is not "considering" but "acting" on an ordinance. Jack Hoogasian, then Lake County state's attorney, promptly voiced his "concern about the dangerous precedent. It could lead to grave legal implications." Hoogasian said at the time, and still believes, that the matter should be resolved in the Illinois Supreme Court.

Just as promptly, State Rep. John S. Matijevich of North Chicago, chairman of the Illinois House Executive Committee, at the time said that his committee would look into prospective changes in the open meetings act. A special subcommittee of his committee has already held two public hearings on the "public's right to know" — one in Chicago, one in Springfield.

At one of these hearings, Del Wright, editor of *The News-Sun* in Waukegan, said that the Lake County secret session raised a larger question: "Is it really in the public interest to allow closed meetings to consider acquisition of property? Insiders seem to have a way of finding out about the purchase site, and whether secrecy actually reduces the expenses for the public doesn't appear that certain." As it happened, *The News-Sun,* using a source on the board, published nine of the ten sites under consideration on the very day they were being considered behind closed doors (most of the sites, it later turned out, were actually available in the published minutes of a committee meeting almost four months before).

The Lake County Forest Preserve board had been all set to go into secret session without any bother. But Hoogasian, Matijevich, members of the news media and others insisted that board members vote to do so. When they did, the vote was an overwhelming 15 to 8 in favor of a closed meeting. But, before the vote, Morrison, the board attorney, explained why he had advised that it be a secret meeting. In so doing, he spoke for many a public official in similar situations. Morrison said he based his advice on a May 4, 1972, Illinois appellate court case, *Collinsville Community Unit School District No. 10* v. *Benjamin and Lillian Witte,* in which the high court ruled that a "school board was not limited to considering only acquisition of property in executive session with formal action required to be taken at public meeting. Legal action concerning acquisition or sale of real property, including passage of motion to acquire property could be taken in closed session," the court ruled in a decision that was never appealed and which, Morrison says, "is now Illinois law."

Problem of interpretation

One of the exceptions to the open meetings act is a meeting "where the acquisition of real property is being considered . . . but no other portion of such meetings may be closed to the public." In another part of the law, it says that "no final action may be taken at a closed session." Morrison notes that the "no final action" phrase is not in the section of the law about acquiring property. In the Collinsville case the court said that "we do not so interpret the law" to mean that such formal action must be taken in open session.

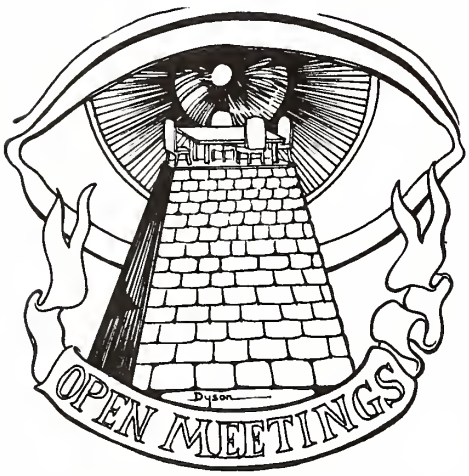
The high court also said: "Public knowledge of board intentions and actions resulting from compulsory public deliberative sessions when considering the purchase of real estate would destroy any advantage to be gained from negotiation and work a severe detriment upon the board and the public they represent."

Scariano insists, however, that the act is "clear and unmistakable. Both the

deliberations and the actions, final or not, of all units of government (with the few exceptions noted) must be conducted and taken at open public meeting. Most important of all," he says, "although deliberations upon the excepted subjects may be held in a closed session, final action upon all matters must be taken in an open meeting."

As Morrison told the forest commissioners, the General Assembly had "some reason" for making exceptions to the open meetings act. But it is difficult to determine, he said, because no records were kept of debate. "Judicial determination," he said, is "the only alternative."

So Morrison looked to the Collinsville decision. And Scariano looked to



an appellate court case in 1975 out of DuPage County in which it was decreed that the intention of the General Assembly in enacting the open meetings act was to favor open deliberation as well as open action.

Atty. Gen. William J. Scott said that exceptions to the law are few. He quoted a 1974 appellate court decision in a case involving news broadcasters and the City of Springfield, where the court said that exceptions "must be narrowly construed because they derogate the general policy of open meetings." At the same time, the state's top elected legal officer noted that "there is no provision in the Act which specifically voids action taken at an improperly closed meeting and no Illinois court has ever so held."

Despite all the controversy, Scariano believes that the open meetings act is "working very well." He cited two basic reasons: (1) The American tradition of "general compliance . . . a lot of people say they may not agree with a law, but they'll follow it;" (2) The news media has been "extremely vigilant . . . suits have been filed." What makes the Illinois law the best in the land, Scariano said, is that it is the only one which requires that the press be notified of meetings of public bodies at the same time and in the same way as the members of the bodies are notified. "That's unique," he said, "and puts teeth in the law."

The Illinois law has gained a certain amount of notoriety. Matijevich, whose committee held the two public hearings, says he is getting requests for transcripts from law schools and other state legislatures. Writing in the Northwestern University Law Review, Douglas Q. Wickham put it plainly: *"Our society firmly believes, on the one hand, that the right to participate in our democracy includes the right to be informed. The people have no real power without factual knowledge of what their government is doing to and for them." To be well informed, Wickham writes, "the public should have some access to the ongoing process of decision-making; not only to what is done, but also to why it is done and what alternatives are considered and rejected. A truly democratic electorate vitally needs to know this information." However, he says, alluding to the title of a decade-old Florida law, "we must concede that there are limits to 'Government in the Sunshine.'" In the early stages of working out a specific problem, Wickham says, "it makes a good deal of sense for any governmental body to retain a zone of privacy within which its members can air internal disagreements." One of Wickham's major points: "The value competing against a 'right to know' then is not a 'right to secrecy,' but an assurance of some insulation from the intense heat of public pressure . . . absolute openness will detract from the overall public interest in informed and rational governmental decisions."

People's right to know

Morrison puts it this way: "The people's right to know is like all other such rights — there is a certain degree of limitation." Open doors or closed doors; that is the question. And if they're closed, when and how often and for what reason?□

*Douglas Q. Wickham, "Let the Sun Shine In!" *Northwestern University Law Review* 68 (July-August 1973): 480-501.

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By ANN LOUSIN

NONONONONONONONONONONONONO NONONONONONONONONON Should Illinois adopt

LEGISLATION enacted by a popular initiative and referendum as an alternative to legislation enacted by a General Assembly is an idea whose time has come — and gone. During the Progressive movement in the early 1900's, reformers suggested the "initiative, referendum and recall" method of improving government. The first two are the method of proposing and adopting legislation outlined in the "Illinois Initiative," the latest reform proposed by the Coalition for Political Honesty. The "recall" is a system of removing public officials whose conduct does not please the people.

The Illinois Initiative is a proposed constitutional amendment allowing voters to bypass the legislative process by drafting and proposing a law (an initiative) and then by adopting the law at a popular election (a referendum). While the concept has a certain appeal and it is difficult for one who believes in democracy to oppose the idea in public, I believe that the Illinois Initiative is shortsighted and would hurt, not improve, the laws of Illinois and frustrate our citizens even more than they are now.

Chiefly as a result of the Progressive movement's efforts, one, two or all of these reforms were incorporated into several state constitutions. Most of the states adopting them were relatively new and had little of the tradition of public service often found in the original colonies. Of the original 13 states, only Massachusetts has the initiative and referendum for legislation. Geographically, 17 of the 21 states adopting the initiative and referendum are west of the Mississippi River. Chronologically, all of them adopted it by 1918 except for Alaska, which adopted a narrowly drawn initiative in its first state constitution in 1959.

ANN LOUSIN
Associate professor at John Marshall Law School, Chicago, she served on the staffs of the General Assembly and the Constitutional Convention.

Constitutional Convention

The 1969-70 Illinois Constitutional Convention considered a proposal to allow a limited initiative for legislation, apparently based upon the Alaska model. However, the convention chose to improve the lawmaking process of the General Assembly rather than allow the alternative of a popular initiative and referendum.

> Legislation enacted by a popular initiative as an alternative to legislation enacted by a General Assembly is an idea whose time has come — and gone

The chief result of an initiative and referendum procedure for enacting laws would be to weaken the chief instrument of the legislative process, the General Assembly. Not even the most ardent proponent of the initiative and referendum suggests that it should be used as a general substitute for the legislature. Instead, proponents argue, it would be used only when the legislature is unwilling to take an action which a significant percentage of the electorate wants taken.

So when would the initiative be used? The General Assembly is one of the three integral branches of state government: the legislative, the executive and the judicial. According to American tradition, the legislative is the one branch which represents the voters. Its members are always elected and are elected more frequently than those of the executive and judicial branches, some of whose members are not even elected. The purpose is to insure that the legislators are as close to the will of the electors as possible. Indeed, one school of thought holds that legislators are merely surrogates for the citizenry, whose time does not permit their legislating directly for themselves.

During the heyday of the initiative and referendum and other legislative reforms, state legislators were notoriously corrupt and elected from disproportionately drawn districts. Few states allowed women to vote for their legislators, and many states severely restricted the exercise of the franchise by blacks, the foreign-born and the poor through harsh application of literacy tests and poll taxes. While no one would insist that legislatures, or any other institutions of man, are perfect, there is no doubt that the state legislatures as a group have improved enormously since 1900. There are several reasons why.

The better legislature

First, the reapportionment cases beginning with *Baker* v. *Carr* in 1962 (369 U.S. 186 (1962)) have insured that each elector's vote is as nearly equal to every other elector's vote as is possible. Insofar as is possible, each faction of our society has the opportunity to be represented by legislators who share their views.

Second, both the Illinois Constitution (Article XIII, section 2) and a state statute *(Illinois Revised Statutes,* Chap-

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By PATRICK QUINN

YESYESYESYESYESYESYESYES YESYESYESYESYESYESYESYESYES the open initiative?

ONE OF THE political realities of the 1970's is the phenomenal growth of citizen action in Illinois public life. In every region of our state, grassroots groups are energetically organizing around a host of issues to improve their communities.

Worthwhile proposals to regulate utilities, reform property taxes, protect neighborhoods and clean up political abuses have sprung not from Illinois' empty-minded political parties, but from average citizens working in community and public interest groups. Time and again, citizens have demonstrated that they are far ahead of foot-dragging politicians when it comes to demanding public interest reforms. Yet every year they must watch helplessly as good legislative proposals are killed by lobbyists and political deals in Springfield.

Clearly the people of Illinois need a mechanism to take on the organized special interests and professional politicians that now dominate the legislative process. This is why the initiative power is so vitally needed in Illinois.

The initiative process allows citizens to bypass the legislature and enact laws directly by petition and referendum. It serves as a democratic safety valve by giving voters a chance to propose innovations and reforms that politicians consistently ignore or sidestep. Often the mere threat of an initiative can force a hesitant legislature to take long-overdue action.

This year, for the first time since 1920, the Illinois legislature is actually debating whether to adopt the initiative process into the state Constitution. The proposal, known as the Illinois Initiative, is a constitutional amendment that would give Illinois citizens the right of initiative.

The Illinois Initiative is a responsible measure based on successful initiative provisions in other states. Initiative petitions would require 375,000 signatures, and these signatures would have to be gathered in a nine-and-one-half month time period before an election. These stringent qualifying standards offer a strong safeguard against frivolous initiative proposals in Illinois. They guarantee that a proposal prove itself and display substantial public support in order to even get on the ballot. In addition, no more than three initiative proposals could be submitted at any one primary or general election. This restriction makes it easier for Illinois voters to study initiative proposals and make informed decisions.

> Clearly the people of Illinois need a mechanism to take on the organized special interests and professional politicians that now dominate the legislature

Experience across the country has shown that initiative lawmaking works well without dire consequences. Today, thousands of municipalities and 22 states have the initiative power, including Missouri, Michigan and Ohio in the Midwest. Initiatives have enjoyed a tremendous resurgence in the 1970's, coinciding with the rise of direct citizen action. Last year more issues were proposed by initiative than ever before in American history.

Initiative campaigns transcend personality politics and focus on issues. In recent years, initiatives have been used in other states to pass tough ethics codes, make tax laws more progressive, mandate returnable bottles, establish and fund conservation programs, protect coastlines and eliminate unfair consumer credit charges. Liberals and conservatives alike have used the initiative process to raise significant issues.

But by no means has the initiative process been a tool of well-financed interest groups. Most successful initiative campaigns have been organized by energetic and enthusiastic volunteers concerned about specific questions of public policy. The initiative process has been a device used by citizens for those times when special interests seem to be dominating the deliberations of the legislative body. Voters have been very discerning and selective with regard to referendum issues. Poorly drafted or extreme measures have not fared well under the harsh light of public inspection. The evidence reveals that voters consistently turn down initiative proposals which benefit only a particular region or interest group.

In addition, the mandates of the federal and state constitutions provide strong safeguards against any possible initiative misuse. A law approved by initiative is just like a law enacted by a legislature; it can be challenged in the courts and struck down if it violates basic constitutional rights.

But since its introduction early in this century, the initiative power has been used most frequently to dismantle social and economic prejudice. Successful state initiatives have abolished poll taxes, granted suffrage to women, instituted civil service and provided greater support for public education. A

Continued at top of page 134.

PATRICK QUINN
Founder and organizer of the Coalition for Political Honesty, a statewide petition group which organized the Political Honesty Initiative in 1976, he was an assistant to former Gov. Dan Walker.

Continued from page 133.

Yes:

The initiative process is a very open process which exposes an issue to intense public attention and scrutiny for a long period of time

thorough study of the public record in the 22 states that permit citizen lawmaking clearly indicates that the initiative power has proven to be a sound, workable and democratic process. Its adoption in Illinois would increase citizen participation in state government and stimulate politicians to be more responsive and accountable.

Right now the Illinois General Assembly is reluctant to squarely address many important issues, especially if these issues threaten vested interests or habits. Large institutional lobbies representing doctors, lawyers, insurance companies, utilities, real estate brokers, businesses and labor unions use their power and influence in Springfield to defeat proposals which threaten their privileges and exemptions. Advocates of economic interest groups spend enormous amounts of money creating good will between themselves and legislators. Lobbyists are in fact the prime source of campaign finances in Illinois. A standard fundraising technique used by many incumbent legislators is to merely mail a campaign solicitation to all lobbyists registered with the state.

Such reliance on special interests results in overrepresentation of certain viewpoints in the General Assembly. Lobbyists are guaranteed access to most legislators and are relied upon for information. The voice of the average citizen is often drowned out by the voices of special interests seeking favored treatment.

Power of lobby groups

Moreover, the structure and procedure of the legislative process with its reliance on the committee system is ideally suited to the work of lobbyists. By influencing key committee chairmen or members, lobbyists can usually stop or water down any bill which adversely affects their clients. As a result, most public interest bills never even reach the floor of either house for full debate.

Under these circumstances, it's not surprising that Illinois lags behind other midwestern states in enacting public interest legislation. Consumer bills to permit no-fault auto insurance, to keep hospital prices under control, to require

Continued from page 132.

No:

When a single issue is submitted to referendum, the public cannot amend and shape the statute as the legislature can do

ter 127, section 604A-101*ff)* require that legislators and most public officers file public statements disclosing their significant financial holdings. These statements cover holdings of the officer and his family. Unfortunately, very few constituents, newspapermen and even political opponents bother to inspect these statements (see *Illinois Issues*, January 1977). However, anyone who wishes to see if his legislator is voting his own pocketbook may do so.

Third, a statute *passed by the Illinois General Assembly* requires disclosure of campaign contributions to public officials. No one denies the significance of money in American politics at all levels. However, in Illinois significant contributions are made public and several candidates disclose every single contributor. Again, if a constituent bothers to look, he can discover who has supported his legislator.

The legislative process

In my four years on the staff of the Illinois House, I saw debates and votes on thousands of bills. Relatively few of them were important enough to be the subject of "special-interest lobbying" and "interest-group pressure." Often bills whipped through committee hearings without a murmur from any interest group — special or general. Those bills important enough to attract the attention of lobbyists usually had one group strongly for the bill and one strongly against it. Legislators heard from both sides, sometimes until the groups canceled each other out. It was rare indeed that an important bill had all the lobbyists on one side.

The plain truth is that bills pass or fail for many different reasons. Sometimes legislators are swayed by their opinion of the chief sponsor of the bill. The sheer volume of bills makes it impossible to study each bill thoroughly. Consequently, legislators often vote with a legislator whose expertise in the field they trust or whose political views jibe with their own. Sometimes a legislator will trade votes for other legislators' bills to obtain votes for his own. These considerations are, in the main, far more important in the legislative process than any "raw power" wielded by special interests.

Another important consideration of the legislative process is that ideas are often proposed before their time has come. A bill may have to be introduced

unit pricing in grocery stores, to end secret land trusts and to curb abuses in the auto repair industry are killed every session. Ethics reforms to regulate lobbyists, to eliminate political double-dipping, to prohibit conflict of interest voting and to tighten income disclosure standards meet a similar fate. To put it bluntly, Illinois legislators are simply unwilling to consider seriously stronger ethical rules of conduct for public officials. It's no wonder that Illinois has the highest rate of political corruption in the country, according to recent U.S. Department of Justice statistics.

Thus the Illinois Initiative is the key finally to getting meaningful action on the public interest reforms that have been proposed over and over again in the state legislature. The test of public referendum allows citizens to judge important issues for themselves without the special interest influence, trade-offs and closing rush of the session that plagues the conventional legislative process.

Through the strengthened right to vote brought on by initiative, the people of Illinois can exercise the sovereign power which they usually delegate to elected representatives. In an age of mass government and bureaucracy, this is an important citizen right to preserve. Illinois government should not become such a highly specialized area that citizens abdicate all legislative responsibility and control to experts and self-interested advocates.

The contention that the citizens of our state cannot be trusted or will not be able to understand complicated legislation is patronizing and elitist. Citizens are as competent to enact legislation as they are to elect public officials.

Common sense of citizens

True democracy rests on the fundamental belief that the people are sufficiently intelligent, sufficiently discerning and sufficiently capable to govern themselves. Average voters should not be looked upon as little children who need to be protected against themselves. They have the common sense and good judgment to make responsible decisions on tough policy questions that affect their lives and pocketbooks.

Admittedly, the initiative decision-making process is different from the conventional legislative approach to lawmaking. Initiatives put the burden of legislative study and analysis on citizens rather than lawmakers. But certainly this responsibility is no more difficult than the burden put on an average legislator who must examine and vote on thousands of bills every session.

The initiative process is a very open process which exposes an issue to intense public attention and scrutiny for a long period of time. By its very nature, it forces proponents and opponents to openly discuss the merits and demerits of a ballot proposal. All sides of a question receive thorough public examination. This kind of exposure and debate is the best democratic way to get the facts on an issue to the people for their political judgment. Moreover, by provoking discussion on overlooked subjects, the initiative process helps educate the people and their leaders on key issues. Even if an initiative issue loses at the polls, the increased public awareness and discussion which it generates often goes a long way toward

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in several sessions before it finally gains acceptance, both in public opinion and in the legislature. For example, the bill to enable municipalities to pass fair housing ordinances was introduced several times in the early 1960's before it passed. First it passed in the House committee; then it passed the House; then it passed the Senate committee; and finally the full Senate. Each year the proponents gained momentum for the bill, both by lobbying (yes, *lobbying*) legislators directly and by persuading constituents to prod their legislators into supporting the bill.

The initiative problems

California has used the initiative more extensively than any state. Virtually all the issues proposed in California are emotionally charged "hot potatoes." Probably the groups ardently supporting the initiative could not muster sufficient support in the legislature and tried to carry their case to the electorate. Since the electorate usually did not agree with the proponents for a change in legislation, the California legislature apparently really did reflect the mood of the public after all. Every year Californians are faced with 3-10 ballot propositions, many of them legislative initiatives. And every year the number of people voting on the propositions is depressingly smaller than those voting for public officials to make the laws.

Moreover, each initiative removed pressure from the legislature, which could tell each group of proponents that it was not convinced "the people" wanted the change and suggest the proponents test public opinion by collecting the signatures needed for an initiative. Of course, once the proponents acquired a list of signatures favoring a proposition, they also had a pre-selected mailing list for anyone interested in future contact with voters favoring that viewpoint. Anyone who has run a modern political campaign knows how valuable a pre-selected mailing list is to a candidate who wants to save postage and energy on compiling a list of voters who are most likely to favor him. Indeed, it is not uncommon for candidates to share their lists with running mates and other candidates they wish to help.

I think this is exactly what would happen in Illinois. For instance, some people have suggest that the U.S. Equal Rights Amendment (ERA) be submitted to the public at a referendum, obviously as a means of removing the controversy from the legislature. It would be a great temptation for legislators who do not want to displease a significant part of their constituency to maintain that a controversy be "put before the people." What could be wrong with such direct democracy?

Plenty. Most important legislative issues, especially emotional ones, are too complex to be dealt with on an "either-or" basis. Abortion is not simply a question of "women's rights" v. "legalized murder," and it is unwise to change the penalties for using marijuana without considering their relationship to selling marijuana and using other drugs. When a single issue is submitted to referendum, the public cannot amend and shape the statute as the legislature can do. In North Dakota a "referendum king" has capitalized upon the simple yes-or-no format of the referendum and engineered the placement of several tax propositions before the electorate. Faced with the question whether they want to pay more taxes, most people vote no, thus dooming many public services. If they were asked, instead, if

Yes:

It's time to open the door to citizen initiative in our state and let the will of the people be the law of the land

resolving a question which might otherwise have gone unaddressed.

The vigorous citizen activity encouraged by initiatives does not weaken the legislature and representative government. On the contrary, the initiative power improves legislative performance by providing direct feedback to elected officials about the public's feelings on different issues. The initiative process is a built-in accountability mechanism to help politicians keep their promises and do a good job. In reality, initiative campaigns give concrete meaning to the citizen right to petition the government for redress of grievances. With the power of initiative, citizens have a valuable democratic tool to promote openness and responsiveness in public institutions and elected officials.

Lawmaking by initiative is both practical and workable in Illinois. Other large industrial states like Michigan, Ohio, Massachusetts and California have found the initiative process to be an excellent way of directly involving average citizens in state government decisionmaking. The initiative power has been a popular and well-established part of the legislative process in these states for many years.

The power of initiative was born during the Progressive movement in the United States at the beginning of this century. It represents a great democratic reform, a reaffirmation of the fundamental principle of self-government and a reassertion of the sovereignty of the people.

In the early 1900's and to this day, opponents of the initiative process have gravely warned of public chaos should direct democracy ever take hold. But their gloomy predictions and exaggerations have never come to pass. Today more than half the nation's population has access to the power of initiative.

Decades of use have proven the soundness of the initiative process. It has performed well when applied to a great diversity of issues and geographic areas.

The hope for better government in Illinois lies in bringing more grassroots democracy to the legislative process. It's time to open the door to citizen initiative in our state and let the will of the people be the law of the land.□

No:

The initiative procedure would actually make the legislature a *less* viable branch of government and *less* able to fulfill its role

they wanted those services, most would vote yes. By separating the issue of who wants to pay for services from that of who wants to have the services the referendum presents a distorted, false choice to the citizens.

Illusion of power

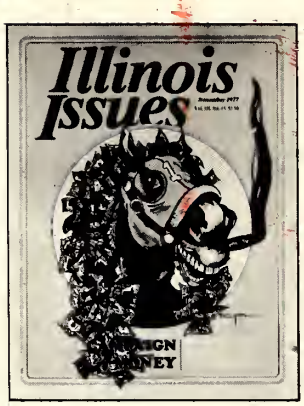
The text of the Illinois Initiative shows how shortsighted the measure is. Apart from its clumsy style, the proposed constitutional amendment creates a marvelous device for a minority of legislators to block any further legislation in an area in which a law has been adopted by initiative and referendum.

This occurs because Article IV, Section 8(d), paragraph three of the Illinois Constitution requires a bill passed by the legislature to set forth completely all sections it is amending in another statute, while the Illinois Initiative, Section 16, would require a two-thirds vote in each house of the General Assembly to pass a bill amending or repealing a statute adopted by initiative and referendum. If the electorate adopts a statute on limits on real estate taxes, for example, it is almost certain that any future bill on real estate tax limits will be required to amend the initiative statute. This is true even if the new bill does not abrogate the effect or intent of the initiated statute. It may, in fact, even improve the statute and reduce limits further.

Nonetheless, the bill would require a two-thirds vote in *each* house. In other words, 20 of the 59 senators could block the bill. This gives 20 senators great leverage, since they could hold the bill "hostage" in exchange for amendments which they wanted. Anyone who thinks an extraordinary majority is easy to obtain ought to remember the fight to obtain the three-fifths vote needed to pass ERA in recent legislative sessions.

I doubt that the Coalition for Political Honesty, in all its zeal to reform the legislature, has truly considered these ramifications of their proposal. As I said earlier, it is unpopular to oppose a proposition purporting to "give power to the people." However, the Illinois Initiative would only give them the *illusion* of power. The initiative and referendum procedure would actually make the legislature a *less* representative branch of government and would result in no better laws than we have now.□

Illinois Issues



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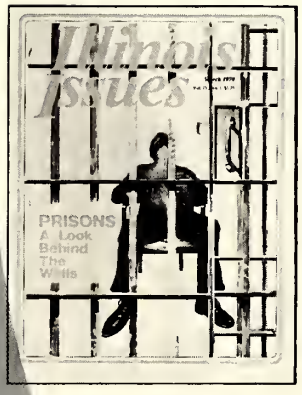

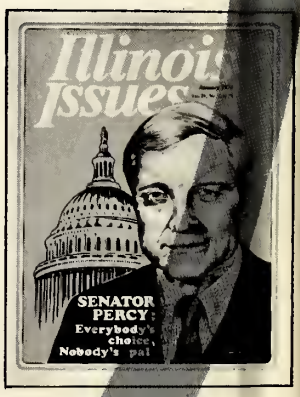

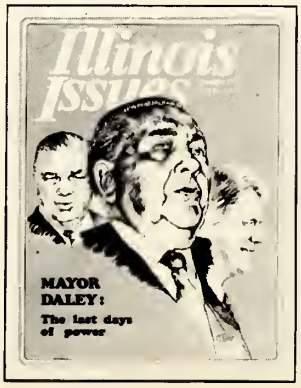

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